

Calendar No. \_\_\_\_\_

108TH CONGRESS  
1ST SESSION**S.** \_\_\_\_\_**[Report No. 108-\_\_\_\_]**\_\_\_\_\_  
  
IN THE SENATE OF THE UNITED STATES

MAY \_\_\_\_ (legislative day, \_\_\_\_\_), 2003

Mr. GRASSLEY, from the Committee on Finance, reported the following original bill; which was read twice and placed on the calendar  
  
\_\_\_\_\_**A BILL**

A bill to provide for reconciliation pursuant to section 201 of the concurrent resolution on the budget for fiscal year 2004.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*3 **SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CON-**  
4 **TENTS.**5 (a) SHORT TITLE.—This Act may be cited as the  
6 “Jobs and Growth Tax Relief Reconciliation Act of 2003”.7 (b) AMENDMENT OF 1986 CODE.—Except as other-  
8 wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment  
2 to, or repeal of, a section or other provision, the reference  
3 shall be considered to be made to a section or other provi-  
4 sion of the Internal Revenue Code of 1986.

5 (c) TABLE OF CONTENTS.—The table of contents of  
6 this Act is as follows:

Sec. 1. Short title; references; table of contents.

#### TITLE I—ACCELERATION OF CERTAIN PREVIOUSLY ENACTED TAX REDUCTIONS; INCREASED EXPENSING FOR SMALL BUSI- NESSES

Sec. 101. Acceleration of 10-percent individual income tax rate bracket expansion.

Sec. 102. Acceleration of reduction in individual income tax rates.

Sec. 103. Minimum tax relief to individuals.

Sec. 104. Acceleration of increase in standard deduction for married taxpayers filing joint returns.

Sec. 105. Acceleration of 15-percent individual income tax rate bracket expansion for married taxpayers filing joint returns.

Sec. 106. Acceleration of increase in, and refundability of, child tax credit.

Sec. 107. Increased expensing for small business.

Sec. 108. Application of EGTRRA sunset to this title.

#### TITLE II—PARTIAL EXCLUSION OF DIVIDENDS

Sec. 201. Partial exclusion of dividends received by individuals.

#### TITLE III—REVENUE PROVISIONS

##### Subtitle A—Provisions Designed To Curtail Tax Shelters

Sec. 301. Clarification of economic substance doctrine.

Sec. 302. Penalty for failing to disclose reportable transaction.

Sec. 303. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.

Sec. 304. Penalty for understatements attributable to transactions lacking economic substance, etc.

Sec. 305. Modifications of substantial understatement penalty for nonreportable transactions.

Sec. 306. Tax shelter exception to confidentiality privileges relating to taxpayer communications.

Sec. 307. Disclosure of reportable transactions.

Sec. 308. Modifications to penalty for failure to register tax shelters.

Sec. 309. Modification of penalty for failure to maintain lists of investors.

Sec. 310. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.

Sec. 311. Understatement of taxpayer's liability by income tax return preparer.

Sec. 312. Penalty on failure to report interests in foreign financial accounts.

Sec. 313. Frivolous tax submissions.

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- Sec. 314. Penalty on promoters of tax shelters.
- Sec. 315. Statute of limitations for taxable years for which listed transactions not reported.
- Sec. 316. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.

## Subtitle B—Enron-Related Tax Shelter Provisions

- Sec. 321. Limitation on transfer or importation of built-in losses.
- Sec. 322. No reduction of basis under section 734 in stock held by partnership in corporate partner.
- Sec. 323. Repeal of special rules for FASITs.
- Sec. 324. Expanded disallowance of deduction for interest on convertible debt.
- Sec. 325. Expanded authority to disallow tax benefits under section 269.
- Sec. 326. Modifications of certain rules relating to controlled foreign corporations.
- Sec. 327. Controlled entities ineligible for REIT status.

## Subtitle C—Other Corporate Governance Provisions

## PART I—GENERAL PROVISIONS

- Sec. 331. Affirmation of consolidated return regulation authority.
- Sec. 332. Signing of corporate tax returns by chief executive officer.
- Sec. 333. Denial of deduction for certain fines, penalties, and other amounts.
- Sec. 334. Disallowance of deduction for punitive damages.

## PART II—EXECUTIVE COMPENSATION REFORM

- Sec. 335. Treatment of nonqualified deferred compensation funded with assets located outside the United States.
- Sec. 336. Inclusion in gross income of funded deferred compensation of corporate insiders.
- Sec. 337. Prohibition on deferral of gain from the exercise of stock options and restricted stock gains through deferred compensation arrangements.
- Sec. 338. Increase in withholding from supplemental wage payments in excess of \$1,000,000.

## Subtitle D—International Provisions

## PART I—PROVISIONS TO DISCOURAGE EXPATRIATION

- Sec. 340. Revision of tax rules on expatriation.
- Sec. 341. Tax treatment of inverted corporate entities.
- Sec. 342. Excise tax on stock compensation of insiders in inverted corporations.
- Sec. 343. Reinsurance of United States risks in foreign jurisdictions.

## PART II—OTHER PROVISIONS

- Sec. 344. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangement.
- Sec. 345. Effectively connected income to include certain foreign source income.
- Sec. 346. Determination of basis of amounts paid from foreign pension plans.
- Sec. 347. Recapture of overall foreign losses on sale of controlled foreign corporation.

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- Sec. 348. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons.
- Sec. 349. Sale of gasoline and diesel fuel at duty-free sales enterprises.
- Sec. 350. Repeal of earned income exclusion of citizens or residents living abroad.

## Subtitle E—Other Revenue Provisions

- Sec. 351. Extension of Internal Revenue Service user fees.
- Sec. 352. Addition of vaccines against hepatitis A to list of taxable vaccines.
- Sec. 353. Disallowance of certain partnership loss transfers.
- Sec. 354. Treatment of stripped interests in bond and preferred stock funds, etc.
- Sec. 355. Reporting of taxable mergers and acquisitions.
- Sec. 356. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.
- Sec. 357. Qualified tax collection contracts.
- Sec. 358. Extension of customs user fees.
- Sec. 359. Clarification of exemption from tax for small property and casualty insurance companies.
- Sec. 360. Partial payment of tax liability in installment agreements.
- Sec. 361. Extension of amortization of intangibles to sports franchises.
- Sec. 362. Deposits made to suspend running of interest on potential underpayments.
- Sec. 363. Clarification of rules for payment of estimated tax for certain deemed asset sales.
- Sec. 364. Limitation on deduction for charitable contributions of patents and similar property.
- Sec. 365. Extension of provision permitting qualified transfers of excess pension assets to retiree health accounts.
- Sec. 366. Proration rules for life insurance business of property and casualty insurance companies.
- Sec. 367. Modification of treatment of transfers to creditors in divisive reorganizations.

## Subtitle F—Other Provisions

- Sec. 371. Temporary State Fiscal Relief Fund.
- Sec. 372. Review of State agency blindness and disability determinations.
- Sec. 373. Prohibition on use of SCHIP funds to provide coverage for childless adults.

## TITLE IV—SMALL BUSINESS AND AGRICULTURAL PROVISIONS

## Subtitle A—Small Business Provisions

- Sec. 401. Exclusion of certain indebtedness of small business investment companies from acquisition indebtedness.
- Sec. 402. Repeal of occupational taxes relating to distilled spirits, wine, and beer.
- Sec. 403. Custom gunsmiths.
- Sec. 404. Simplification of excise tax imposed on bows and arrows.

## Subtitle B—Agricultural Provisions

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- Sec. 411. Capital gain treatment under section 631(b) to apply to outright sales by landowners.
- Sec. 412. Special rules for livestock sold on account of weather-related conditions.
- Sec. 413. Exclusion for loan payments under national health service corps loan repayment program.
- Sec. 414. Payment of dividends on stock of cooperatives without reducing patronage dividends.

## TITLE V—SIMPLIFICATION AND OTHER PROVISIONS

## Subtitle A—Uniform Definition of Child

- Sec. 501. Uniform definition of child, etc.
- Sec. 502. Modifications of definition of head of household.
- Sec. 503. Modifications of dependent care credit.
- Sec. 504. Modifications of child tax credit.
- Sec. 505. Modifications of earned income credit.
- Sec. 506. Modifications of deduction for personal exemption for dependents.
- Sec. 507. Technical and conforming amendments.
- Sec. 508. Effective date.

## Subtitle B—Simplification

- Sec. 511. Consolidation of life and non-life insurance company returns.
- Sec. 512. Special rules for taxation of life insurance companies.
- Sec. 513. Modification of active business definition under section 355.

## Subtitle C—Other Provisions

- Sec. 521. Civil rights tax relief.
- Sec. 522. Increase in section 382 limitation for companies emerging from bankruptcy.
- Sec. 523. Increase in historic rehabilitation credit for certain low-income housing for the elderly.
- Sec. 524. Modification of application of income forecast method of depreciation.
- Sec. 525. Additional advance refundings of certain governmental bonds.
- Sec. 526. Exclusion of income derived from certain wagers on horse races from gross income of nonresident alien individuals.
- Sec. 527. Federal reimbursement of emergency health services furnished to undocumented aliens.
- Sec. 528. Premiums for mortgage insurance.

## TITLE VI—SUNSET

- Sec. 601. Sunset.

1 **TITLE I—ACCELERATION OF**  
2 **CERTAIN PREVIOUSLY EN-**  
3 **ACTED TAX REDUCTIONS; IN-**  
4 **CREASED EXPENSING FOR**  
5 **SMALL BUSINESSES**

6 **SEC. 101. ACCELERATION OF 10-PERCENT INDIVIDUAL IN-**  
7 **COME TAX RATE BRACKET EXPANSION.**

8 (a) IN GENERAL.—Clause (i) of section 1(i)(1)(B)  
9 (relating to the initial bracket amount) is amended by  
10 striking “(\$12,000 in the case of taxable years beginning  
11 before January 1, 2008)”.

12 (b) INFLATION ADJUSTMENT BEGINNING IN 2004.—  
13 Subparagraph (C) of section 1(i)(1) (relating to inflation  
14 adjustment) is amended to read as follows:

15 “(C) INFLATION ADJUSTMENT.—In pre-  
16 scribing the tables under subsection (f) which  
17 apply with respect to taxable years beginning in  
18 calendar years after 2003—

19 “(i) the cost-of-living adjustment used  
20 in making adjustments to the initial brack-  
21 et amount shall be determined under sub-  
22 section (f)(3) by substituting ‘2002’ for  
23 ‘1992’ in subparagraph (B) thereof, and

1 “(ii) such adjustment shall not apply  
2 to the amount referred to in subparagraph  
3 (B)(iii).

4 If any amount after adjustment under the pre-  
5 ceding sentence is not a multiple of \$50, such  
6 amount shall be rounded to the next lowest  
7 multiple of \$50.”.

8 (c) EFFECTIVE DATES.—

9 (1) SUBSECTION (a).—The amendment made by  
10 subsection (a) shall apply to taxable years beginning  
11 after December 31, 2002.

12 (2) SUBSECTION (b).—The amendment made by  
13 subsection (b) shall apply to taxable years beginning  
14 after December 31, 2003.

15 (3) TABLES FOR 2003.—The Secretary of the  
16 Treasury shall modify each table which has been  
17 prescribed for taxable years beginning in 2003 and  
18 which relates to the amendment made by subsection  
19 (a), section 102, or section 103 to reflect each such  
20 amendment.

21 **SEC. 102. ACCELERATION OF REDUCTION IN INDIVIDUAL**  
22 **INCOME TAX RATES.**

23 (a) IN GENERAL.—The table in paragraph (2) of sec-  
24 tion 1(i) (relating to reductions in rates after June 30,  
25 2001) is amended to read as follows:

"In the case of taxable years beginning during calendar year:	The corresponding percentages shall be substituted for the following percentages:			
	28%	31%	36%	39.6%
2001 .....	27.5%	30.5%	35.5%	39.1%
2002 .....	27.0%	30.0%	35.0%	38.6%
2003 and thereafter .....	25.0%	28.0%	33.0%	35.0%".

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2002.

4 **SEC. 103. MINIMUM TAX RELIEF TO INDIVIDUALS.**

5 (a) IN GENERAL.—So much of paragraph (1) of sec-  
6 tion 55(d) (relating to exemption amount for taxpayers  
7 other than corporations) as precedes subparagraph (C)  
8 thereof is amended to read as follows:

9 “(1) EXEMPTION AMOUNT FOR TAXPAYERS  
10 OTHER THAN CORPORATIONS.—In the case of a tax-  
11 payer other than a corporation, the term ‘exemption  
12 amount’ means as follows:

13 “(A) JOINT RETURN AND SURVIVING  
14 SPOUSE.—In the case of a joint return or a sur-  
15 viving spouse, the amount under the following  
16 table:

"In the case of taxable years beginning:	The exemption amount is:
Before 2001 .....	\$45,000
In 2001 and 2002 .....	\$49,000
In 2003, 2004, and 2005 .....	\$61,000
After 2005 .....	\$45,000.

17 “(B) INDIVIDUAL NOT MARRIED AND NOT  
18 A SURVIVING SPOUSE.—In the case of an indi-  
19 vidual who is not a married individual and is



1 not a surviving spouse, the amount under the  
 2 following table:

<b>“In the case of taxable years beginning:</b>	<b>The exemption amount is:</b>
Before 2001 .....	\$33,750
In 2001 and 2002 .....	\$35,750
In 2003, 2004, and 2005 .....	\$41,750
After 2005 .....	\$33,750.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 55(d)(1)(C) is amended—

5 (A) by striking “, and” and inserting a pe-  
 6 riod, and

7 (B) by striking “50 percent” and inserting  
 8 “MARRIED INDIVIDUAL FILING A SEPARATE RE-  
 9 TURN.—50 percent”.

10 (2) Section 55(d)(1)(D) is amended by striking  
 11 “\$22,500” and inserting “ESTATE AND TRUST.—  
 12 \$22,500”.

13 (c) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply to taxable years beginning after  
 15 December 31, 2002.

16 **SEC. 104. ACCELERATION OF INCREASE IN STANDARD DE-**  
 17 **DUCTION FOR MARRIED TAXPAYERS FILING**  
 18 **JOINT RETURNS.**

19 (a) IN GENERAL.—Paragraph (2) of section 63(c)  
 20 (relating to basic standard deduction) is amended to read  
 21 as follows:

1           “(2) BASIC STANDARD DEDUCTION.—For pur-  
2           poses of paragraph (1), the basic standard deduction  
3           is—

4                   “(A) 200 percent of the dollar amount in  
5                   effect under subparagraph (C) for the taxable  
6                   year in the case of—

7                           “(i) a joint return, or

8                           “(ii) a surviving spouse (as defined in  
9                           section 2(a)),

10                   “(B) \$4,400 in the case of a head of  
11                   household (as defined in section 2(b)), or

12                   “(C) \$3,000 in any other case.”.

13           (b) CONFORMING AMENDMENTS.—

14                   (1) Section 63(c)(4) is amended by striking  
15                   “(2)(D)” each place it occurs and inserting  
16                   “(2)(C)”.

17                   (2) Section 63(c) is amended by striking para-  
18                   graph (7).

19                   (3) Section 301(d) of the Economic Growth and  
20                   Tax Relief Reconciliation Act of 2001 is amended by  
21                   striking “2004” and inserting “2002”.

22           (c) EFFECTIVE DATE.—The amendments made by  
23           this section shall apply to taxable years beginning after  
24           December 31, 2002.

1 **SEC. 105. ACCELERATION OF 15-PERCENT INDIVIDUAL IN-**  
2 **COME TAX RATE BRACKET EXPANSION FOR**  
3 **MARRIED TAXPAYERS FILING JOINT RE-**  
4 **TURNS.**

5 (a) IN GENERAL.—Paragraph (8) of section 1(f) (re-  
6 lating to phaseout of marriage penalty in 15-percent  
7 bracket) is amended to read as follows:

8 “(8) ELIMINATION OF MARRIAGE PENALTY IN  
9 15-PERCENT BRACKET.—With respect to taxable  
10 years beginning after December 31, 2002, in pre-  
11 scribing the tables under paragraph (1)—

12 “(A) the maximum taxable income in the  
13 15 percent rate bracket in the table contained  
14 in subsection (a) (and the minimum taxable in-  
15 come in the next higher taxable income bracket  
16 in such table) shall be 200 percent of the max-  
17 imum taxable income in the 15-percent rate  
18 bracket in the table contained in subsection (c)  
19 (after any other adjustment under this sub-  
20 section), and

21 “(B) the comparable taxable income  
22 amounts in the table contained in subsection  
23 (d) shall be  $\frac{1}{2}$  of the amounts determined  
24 under subparagraph (A).”.

25 (b) CONFORMING AMENDMENTS.—

1           (1) The heading for subsection (f) of section 1  
2           is amended by striking “PHASEOUT” and inserting  
3           “ELIMINATION”.

4           (2) Section 302(c) of the Economic Growth and  
5           Tax Relief Reconciliation Act of 2001 is amended by  
6           striking “2004” and inserting “2002”.

7           (c) EFFECTIVE DATE.—The amendments made by  
8           this section shall apply to taxable years beginning after  
9           December 31, 2002.

10   **SEC. 106. ACCELERATION OF INCREASE IN, AND**  
11           **REFUNDABILITY OF, CHILD TAX CREDIT.**

12           (a) ACCELERATION OF INCREASE IN CREDIT.—Sub-  
13           section (a) of section 24 (relating to child tax credit) is  
14           amended to read as follows:

15           “(a) ALLOWANCE OF CREDIT.—There shall be al-  
16           lowed as a credit against the tax imposed by this chapter  
17           for the taxable year with respect to each qualifying child  
18           of the taxpayer an amount equal to \$1,000.”.

19           (b) EXPANSION OF CREDIT REFUNDABILITY.—Sec-  
20           tion 24(d)(1)(B)(i) (relating to portion of credit refund-  
21           able) is amended by striking “(10 percent in the case of  
22           taxable years beginning before January 1, 2005)”.

23           (c) ADVANCE PAYMENT OF PORTION OF INCREASED  
24           CREDIT IN 2003.—

1           (1) IN GENERAL.—Subchapter B of chapter 65  
2           (relating to abatements, credits, and refunds) is  
3           amended by adding at the end the following new sec-  
4           tion:

5   **“SEC. 6429. ADVANCE PAYMENT OF PORTION OF IN-**  
6           **CREASED CHILD CREDIT FOR 2003.**

7           “(a) IN GENERAL.—Each taxpayer who claimed a  
8           credit under section 24 on the return for the taxpayer’s  
9           first taxable year beginning in 2002 shall be treated as  
10          having made a payment against the tax imposed by chap-  
11          ter 1 for such taxable year in an amount equal to the child  
12          tax credit refund amount (if any) for such taxable year.

13          “(b) CHILD TAX CREDIT REFUND AMOUNT.—For  
14          purposes of this section, the child tax credit refund  
15          amount is the amount by which the aggregate credits al-  
16          lowed under part IV of subchapter A of chapter 1 for such  
17          first taxable year would have been increased if—

18                 “(1) the per child amount under section  
19                 24(a)(2) for such year were \$1,000,

20                 “(2) only qualifying children (as defined in sec-  
21                 tion 24(c)) of the taxpayer for such year who had  
22                 not attained age 17 as of December 31, 2003, were  
23                 taken into account, and

24                 “(3) section 24(d)(1)(B)(ii) did not apply.

1       “(c) TIMING OF PAYMENTS.—In the case of any over-  
2 payment attributable to this section, the Secretary shall,  
3 subject to the provisions of this title, refund or credit such  
4 overpayment as rapidly as possible and, to the extent prac-  
5 ticable, before October 1, 2003. No refund or credit shall  
6 be made or allowed under this section after December 31,  
7 2003.

8       “(d) COORDINATION WITH CHILD TAX CREDIT.—

9           “(1) IN GENERAL.—The amount of credit  
10 which would (but for this subsection and section 26)  
11 be allowed under section 24 for the taxpayer’s first  
12 taxable year beginning in 2003 shall be reduced (but  
13 not below zero) by the payments made to the tax-  
14 payer under this section. Any failure to so reduce  
15 the credit shall be treated as arising out of a mathe-  
16 matical or clerical error and assessed according to  
17 section 6213(b)(1).

18           “(2) JOINT RETURNS.—In the case of a pay-  
19 ment under this section with respect to a joint re-  
20 turn, half of such payment shall be treated as hav-  
21 ing been made to each individual filing such return.

22       “(e) NO INTEREST.—No interest shall be allowed on  
23 any overpayment attributable to this section.”.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by adding at the end the following new item:

“Sec. 6429. Advance payment of portion of increased child credit for 2003.”.

4 (d) **EFFECTIVE DATES.**—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2002.

9 (2) SUBSECTION (c).—The amendments made  
10 by subsection (c) shall take effect on the date of the  
11 enactment of this Act.

**12 SEC. 107. INCREASED EXPENSING FOR SMALL BUSINESS.**

13 (a) IN GENERAL.—Paragraph (1) of section 179(b)  
14 (relating to dollar limitation) is amended to read as fol-  
15 lows:

16                   “(1) DOLLAR LIMITATION.—The aggregate cost  
17           which may be taken into account under subsection  
18           (a) for any taxable year shall not exceed \$75,000.”.

(b) INCREASE IN QUALIFYING INVESTMENT AT WHICH PHASEOUT BEGINS.—Paragraph (2) of section 179(b) (relating to reduction in limitation) is amended by striking “\$200,000” and inserting “\$325,000”.

1 (c) OFF-THE-SHELF COMPUTER SOFTWARE.—Para-  
2 graph (1) of section 179(d) (defining section 179 prop-  
3 erty) is amended to read as follows:

4 “(1) SECTION 179 PROPERTY.—For purposes  
5 of this section, the term ‘section 179 property’  
6 means property—

7 “(A) which is—

8 “(i) tangible property (to which sec-  
9 tion 168 applies), or

10 “(ii) computer software (as defined in  
11 section 197(e)(3)(B)) which is described in  
12 section 197(e)(3)(A)(i) and to which sec-  
13 tion 167 applies,

14 “(B) which is section 1245 property (as  
15 defined in section 1245(a)(3)), and

16 “(C) which is acquired by purchase for use  
17 in the active conduct of a trade or business.

18 Such term shall not include any property described  
19 in section 50(b) and shall not include air condi-  
20 tioning or heating units.”.

21 (d) ADJUSTMENT OF DOLLAR LIMIT AND PHASEOUT  
22 THRESHOLD FOR INFLATION.—Subsection (b) of section  
23 179 (relating to limitations) is amended by adding at the  
24 end the following new paragraph:

25 “(5) INFLATION ADJUSTMENTS.—



1           “(A) IN GENERAL.—In the case of any  
2 taxable year beginning in a calendar year after  
3 2003, the dollar amounts in paragraphs (1) and  
4 (2) shall each be increased by an amount equal  
5 to—

6                   “(i) such dollar amount, multiplied by

7                   “(ii) the cost-of-living adjustment de-  
8 termined under section 1(f)(3) for the cal-  
9 endar year in which the taxable year be-  
10 gins, by substituting ‘calendar year 2002’  
11 for ‘calendar year 1992’ in subparagraph  
12 (B) thereof.

13           “(B) ROUNDING.—

14                   “(i) DOLLAR LIMITATION.—If the  
15 amount in paragraph (1) as increased  
16 under subparagraph (A) is not a multiple  
17 of \$1,000, such amount shall be rounded  
18 to the nearest multiple of \$1,000.

19                   “(ii) PHASEOUT AMOUNT.—If the  
20 amount in paragraph (2) as increased  
21 under subparagraph (A) is not a multiple  
22 of \$10,000, such amount shall be rounded  
23 to the nearest multiple of \$10,000.”.

1 (e) REVOCATION OF ELECTION.—Paragraph (2) of  
2 section 179(c) (relating to election irrevocable) is amended  
3 to read as follows:

4 “(2) REVOCATION OF ELECTION.—The tax-  
5 payer may revoke an election under paragraph (1),  
6 and any specification contained in any such election,  
7 with respect to any property. Such revocation, once  
8 made, shall be irrevocable.”.

9 (f) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to taxable years beginning after  
11 December 31, 2002.

12 **SEC. 108. APPLICATION OF EGTRRA SUNSET TO THIS TITLE.**

13 Each amendment made by this title (other than sec-  
14 tion 107) shall be subject to title IX of the Economic  
15 Growth and Tax Relief Reconciliation Act of 2001 to the  
16 same extent and in the same manner as the provision of  
17 such Act to which such amendment relates.

18 **TITLE II—PARTIAL EXCLUSION**  
19 **OF DIVIDENDS**

20 **SEC. 201. PARTIAL EXCLUSION OF DIVIDENDS RECEIVED**  
21 **BY INDIVIDUALS.**

22 (a) GENERAL RULE.—Part III of subchapter B of  
23 chapter 1 is amended by inserting after section 115 the  
24 following new section:

1 **“SEC. 116. PARTIAL EXCLUSION OF DIVIDENDS RECEIVED**  
2 **BY INDIVIDUALS.**

3 “(a) EXCLUSION FROM GROSS INCOME.—

4 “(1) IN GENERAL.—Gross income does not in-  
5 clude qualified dividend income received during the  
6 taxable year by an individual.

7 “(2) LIMITATION.—Paragraph (1) shall apply  
8 to qualified dividend income of a taxpayer only to  
9 the extent such income does not exceed the sum of—

10 “(A) \$500 (\$250 in the case of a married  
11 individual filing a separate return), plus

12 “(B) 10 percent (20 percent in the case of  
13 taxable years beginning after 2007) of such in-  
14 come in excess of the amount applicable under  
15 subparagraph (A).

16 “(b) QUALIFIED DIVIDEND INCOME.—For purposes  
17 of this subsection—

18 “(1) IN GENERAL.—The term ‘qualified divi-  
19 dend income’ means dividends received with respect  
20 to any share of stock of—

21 “(A) any domestic corporation, or

22 “(B) any foreign corporation but only if  
23 such share of stock is readily tradable on an es-  
24 tablished securities market.

25 “(2) CERTAIN DIVIDENDS EXCLUDED.—Such  
26 term shall not include—

1           “(A) any dividend from a corporation  
2           which for the taxable year of the corporation in  
3           which the distribution is made, or the preceding  
4           taxable year, is a corporation exempt from tax  
5           under section 501 or 521,

6           “(B) any amount allowed as a deduction  
7           under section 591 (relating to deduction for  
8           dividends paid by mutual savings banks, etc.),  
9           and

10          “(C) any dividend described in section  
11          404(k).

12          “(3) EXCLUSION OF DIVIDENDS OF CERTAIN  
13          FOREIGN CORPORATIONS.—Such term shall not in-  
14          clude any dividend from a foreign corporation which  
15          for the taxable year of the corporation in which the  
16          distribution was made, or the preceding taxable  
17          year, is a foreign personal holding company (as de-  
18          fined in section 552), a foreign investment company  
19          (as defined in section 1246(b)), or a passive foreign  
20          investment company (as defined in section 1297).

21          “(4) COORDINATION WITH SECTION 246(C).—  
22          Such term shall not include any dividend on any  
23          share of stock—

1           “(A) with respect to which the holding pe-  
2           riod requirements of section 246(c) are not met,  
3           or

4           “(B) to the extent that the taxpayer is  
5           under an obligation (whether pursuant to a  
6           short sale or otherwise) to make related pay-  
7           ments with respect to positions in substantially  
8           similar or related property.

9           “(c) SPECIAL RULES.—

10           “(1) AMOUNTS TAKEN INTO ACCOUNT AS IN-  
11           VESTMENT INCOME.—Qualified dividend income  
12           shall not include any amount which the taxpayer  
13           takes into account as investment income under sec-  
14           tion 163(d)(4)(B).

15           “(2) COORDINATION WITH FOREIGN TAX CRED-  
16           IT AND DEDUCTION.—No credit shall be allowed  
17           under section 901, and no deduction shall be allowed  
18           under this chapter, for any taxes paid or accrued  
19           with respect to any income excludable under this  
20           section.

21           “(3) EXTRAORDINARY DIVIDENDS.—If an indi-  
22           vidual receives, with respect to any share of stock,  
23           qualified dividend income from 1 or more dividends  
24           which are extraordinary dividends (within the mean-  
25           ing of section 1059(c)), any loss on the sale or ex-

1 change of such share shall, to the extent of such  
2 dividends, be treated as long-term capital loss.

3 “(4) CERTAIN NONRESIDENT ALIENS INELI-  
4 GIBLE FOR EXCLUSION.—In the case of a non-  
5 resident alien individual, subsection (a) shall apply  
6 only in determining the tax imposed for the taxable  
7 year by sections 871(b)(1) and 877(b).

8 “(5) EXCLUSION DISREGARDED IN DETER-  
9 MINING INCOME FOR CERTAIN PURPOSES.—Sub-  
10 section (a) shall not apply for purposes of deter-  
11 mining amounts of income under sections 32(i),  
12 86(b), 135(b), 137(b), 219(g), 221(b), 222(b),  
13 408A(c)(3), 469(i), and 530(c), or subpart A of part  
14 IV of subchapter A.

15 “(6) TREATMENT OF DIVIDENDS FROM REGU-  
16 LATED INVESTMENT COMPANIES AND REAL ESTATE  
17 INVESTMENT TRUSTS.—A dividend from a regulated  
18 investment company or real estate investment trust  
19 shall be subject to the limitations prescribed in sec-  
20 tions 854 and 857.”.

21 (b) EXCLUSION OF DIVIDENDS FROM INVESTMENT  
22 INCOME.—Subparagraph (B) of section 163(d)(4) (defin-  
23 ing net investment income) is amended by adding at the  
24 end the following flush sentence:

1           “Such term shall include qualified dividend in-  
2           come (as defined in section 116(b)) only to the  
3           extent the taxpayer elects to treat such income  
4           as investment income for purposes of this sub-  
5           section.”.

6           (c) TREATMENT OF DIVIDENDS FROM REGULATED  
7 INVESTMENT COMPANIES.—

8           (1) Subsection (a) of section 854 (relating to  
9           dividends received from regulated investment compa-  
10          nies) is amended by inserting “section 116 (relating  
11          to partial exclusion of dividends received by individ-  
12          uals) and” after “For purposes of”.

13          (2) Paragraph (1) of section 854(b) (relating to  
14          other dividends) is amended by redesignating sub-  
15          paragraph (B) as subparagraph (C) and by inserting  
16          after subparagraph (A) the following new subpara-  
17          graph:

18               “(B) EXCLUSION UNDER SECTION 116.—

19               “(i) IN GENERAL.—If the aggregate  
20               dividends received by a regulated invest-  
21               ment company during any taxable year are  
22               less than 95 percent of its gross income,  
23               then, in computing the exclusion under  
24               section 116, rules similar to the rules of  
25               subparagraph (A) shall apply.

1                   “(ii) GROSS INCOME.—For purposes  
2                   of clause (i), in the case of 1 or more sales  
3                   or other dispositions of stock or securities,  
4                   the term ‘gross income’ includes only the  
5                   excess of—

6                   “(I) the net short-term capital  
7                   gain from such sales or dispositions,  
8                   over

9                   “(II) the net long-term capital  
10                  loss from such sales or dispositions.”.

11               (3) Subparagraph (C) of section 854(b)(1), as  
12               redesignated by paragraph (2), is amended by strik-  
13               ing “subparagraph (A)” and inserting “subpara-  
14               graph (A) or (B)”.

15               (4) Paragraph (2) of section 854(b) is amended  
16               by inserting “the exclusion under section 116 and”  
17               after “for purposes of”.

18               (5) Subsection (b) of section 854 is amended by  
19               adding at the end the following new paragraph:

20               “(5) COORDINATION WITH SECTION 116.—For  
21               purposes of paragraph (1)(B), an amount shall be  
22               treated as a dividend only if the amount is qualified  
23               dividend income (within the meaning of section  
24               116(b)).”.



1 (d) TREATMENT OF DIVIDENDS RECEIVED FROM  
2 REAL ESTATE INVESTMENT TRUSTS.—Section 857(c)  
3 (relating to restrictions applicable to dividends received  
4 from real estate investment trusts) is amended to read as  
5 follows:

6 “(c) RESTRICTIONS APPLICABLE TO DIVIDENDS RE-  
7 CEIVED FROM REAL ESTATE INVESTMENT TRUSTS.—

8 “(1) SECTION 243.—For purposes of section  
9 243 (relating to deductions for dividends received by  
10 corporations), a dividend received from a real estate  
11 investment trust which meets the requirements of  
12 this part shall not be considered a dividend.

13 “(2) SECTION 116.—For purposes of section  
14 116 (relating to exclusion of dividends), rules similar  
15 to the rules of section 854(b)(1)(B) shall apply to  
16 dividends received from a real estate trust which  
17 meets the requirements of this part.”.

18 (e) CONFORMING AMENDMENTS.—

19 (1) Subsection (f) of section 301 is amended  
20 adding at the end the following new paragraph:

21 “(4) For partial exclusion from gross income of  
22 dividends received by individuals, see section 116.”.

23 (2) Paragraph (1) of section 306(a) is amended  
24 by adding at the end the following new subpara-  
25 graph:

1                   “(D) TREATMENT AS DIVIDEND.—For  
2                   purposes of section 116, any amount treated as  
3                   ordinary income under this paragraph shall be  
4                   treated as a dividend received from the corpora-  
5                   tion.”.

6                   (3)(A) Subpart C of part II of subchapter C of  
7                   chapter 1 (relating to collapsible corporations) is re-  
8                   pealed.

9                   (B)(i) Section 338(h) is amended by striking  
10                  paragraph (14).

11                  (ii) Sections 467(c)(5)(C), 1255(b)(2), and  
12                  1257(d) are each amended by striking “,  
13                  341(e)(12),”.

14                  (iii) The table of subparts for part II of sub-  
15                  chapter C of chapter 1 is amended by striking the  
16                  item related to subpart C.

17                  (4) Section 531(a) is amended by inserting “90  
18                  percent (80 percent in the case of taxable years be-  
19                  ginning after 2007) of” after “equal to”.

20                  (5) Section 541(a) is amended by inserting “90  
21                  percent (80 percent in the case of taxable years be-  
22                  ginning after 2007) of” after “equal to”.

23                  (6) Section 584(c) is amended by adding at the  
24                  end the following new flush sentence:

1 “The proportionate share of each participant in the  
2 amount of dividends received by the common trust fund  
3 and to which section 116 applies shall be considered for  
4 purposes of such paragraph as having been received by  
5 such participant.”.

6 (7) Section 643(a) is amended by redesignating  
7 paragraph (7) as paragraph (8) and by inserting  
8 after paragraph (6) the following new paragraph:

9 “(7) EXCLUDED DIVIDENDS.—There shall be  
10 included the amount of any dividends excluded from  
11 gross income under section 116 (relating to partial  
12 exclusion of dividends).”.

13 (8) Paragraph (5) of section 702(a) is amended  
14 to read as follows:

15 “(5) dividends with respect to which section  
16 116 or part VII of subchapter B applies,”.

17 (f) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to taxable years beginning after  
19 December 31, 2003.

1                   **TITLE III—REVENUE**  
2                   **PROVISIONS**  
3       **Subtitle A—Provisions Designed To**  
4                   **Curtail Tax Shelters**

5       **SEC. 301. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**  
6                   **TRINE.**

7           (a) IN GENERAL.—Section 7701 is amended by re-  
8       designating subsection (n) as subsection (o) and by insert-  
9       ing after subsection (m) the following new subsection:

10       “(n) CLARIFICATION OF ECONOMIC SUBSTANCE  
11       DOCTRINE; ETC.—

12               “(1) GENERAL RULES.—

13                   “(A) IN GENERAL.—In applying the eco-  
14               nomic substance doctrine, the determination of  
15               whether a transaction has economic substance  
16               shall be made as provided in this paragraph.

17                   “(B) DEFINITION OF ECONOMIC SUB-  
18               STANCE.—For purposes of subparagraph (A)—

19                       “(i) IN GENERAL.—A transaction has  
20               economic substance only if—

21                           “(I) the transaction changes in a  
22               meaningful way (apart from Federal  
23               tax effects) the taxpayer’s economic  
24               position, and

1                   “(II) the taxpayer has a substan-  
2                   tial nontax purpose for entering into  
3                   such transaction and the transaction  
4                   is a reasonable means of accom-  
5                   plishing such purpose.

6                   In applying subclause (II), a purpose of  
7                   achieving a financial accounting benefit  
8                   shall not be taken into account in deter-  
9                   mining whether a transaction has a sub-  
10                  stantial nontax purpose if the origin of  
11                  such financial accounting benefit is a re-  
12                  duction of income tax.

13                  “(ii) SPECIAL RULE WHERE TAX-  
14                  PAYER RELIES ON PROFIT POTENTIAL.—A  
15                  transaction shall not be treated as having  
16                  economic substance by reason of having a  
17                  potential for profit unless—

18                         “(I) the present value of the rea-  
19                         sonably expected pre-tax profit from  
20                         the transaction is substantial in rela-  
21                         tion to the present value of the ex-  
22                         pected net tax benefits that would be  
23                         allowed if the transaction were re-  
24                         spected, and

1                   “(II) the reasonably expected  
2                   pre-tax profit from the transaction ex-  
3                   ceeds a risk-free rate of return.

4                   “(C) TREATMENT OF FEES AND FOREIGN  
5                   TAXES.—Fees and other transaction expenses  
6                   and foreign taxes shall be taken into account as  
7                   expenses in determining pre-tax profit under  
8                   subparagraph (B)(ii).

9                   “(2) SPECIAL RULES FOR TRANSACTIONS WITH  
10                  TAX-INDIFFERENT PARTIES.—

11                  “(A) SPECIAL RULES FOR FINANCING  
12                  TRANSACTIONS.—The form of a transaction  
13                  which is in substance the borrowing of money  
14                  or the acquisition of financial capital directly or  
15                  indirectly from a tax-indifferent party shall not  
16                  be respected if the present value of the deduc-  
17                  tions to be claimed with respect to the trans-  
18                  action is substantially in excess of the present  
19                  value of the anticipated economic returns of the  
20                  person lending the money or providing the fi-  
21                  nancial capital. A public offering shall be treat-  
22                  ed as a borrowing, or an acquisition of financial  
23                  capital, from a tax-indifferent party if it is rea-  
24                  sonably expected that at least 50 percent of the

1 offering will be placed with tax-indifferent par-  
2 ties.

3 “(B) ARTIFICIAL INCOME SHIFTING AND  
4 BASIS ADJUSTMENTS.—The form of a trans-  
5 action with a tax-indifferent party shall not be  
6 respected if—

7 “(i) it results in an allocation of in-  
8 come or gain to the tax-indifferent party in  
9 excess of such party’s economic income or  
10 gain, or

11 “(ii) it results in a basis adjustment  
12 or shifting of basis on account of over-  
13 stating the income or gain of the tax-indif-  
14 ferent party.

15 “(3) DEFINITIONS AND SPECIAL RULES.—For  
16 purposes of this subsection—

17 “(A) ECONOMIC SUBSTANCE DOCTRINE.—  
18 The term ‘economic substance doctrine’ means  
19 the common law doctrine under which tax bene-  
20 fits under subtitle A with respect to a trans-  
21 action are not allowable if the transaction does  
22 not have economic substance or lacks a business  
23 purpose.

24 “(B) TAX-INDIFFERENT PARTY.—The  
25 term ‘tax-indifferent party’ means any person

1 or entity not subject to tax imposed by subtitle  
2 A. A person shall be treated as a tax-indifferent  
3 party with respect to a transaction if the items  
4 taken into account with respect to the trans-  
5 action have no substantial impact on such per-  
6 son's liability under subtitle A.

7 “(C) EXCEPTION FOR PERSONAL TRANS-  
8 ACTIONS OF INDIVIDUALS.—In the case of an  
9 individual, this subsection shall apply only to  
10 transactions entered into in connection with a  
11 trade or business or an activity engaged in for  
12 the production of income.

13 “(D) TREATMENT OF LESSORS.—A lessor  
14 of tangible property subject to a lease shall be  
15 treated as satisfying the requirements of para-  
16 graph (1)(B)(ii) with respect to the leased prop-  
17 erty if such lease satisfies such requirements as  
18 provided by the Secretary.

19 “(4) OTHER COMMON LAW DOCTRINES NOT AF-  
20 FECTED.—Except as specifically provided in this  
21 subsection, the provisions of this subsection shall not  
22 be construed as altering or supplanting any other  
23 rule of law, and the requirements of this subsection  
24 shall be construed as being in addition to any such  
25 other rule of law.



1           “(5) REGULATIONS.—The Secretary shall pre-  
2       scribe such regulations as may be necessary or ap-  
3       propriate to carry out the purposes of this sub-  
4       section. Such regulations may include exemptions  
5       from the application of this subsection.”.

6       (b) EFFECTIVE DATE.—The amendments made by  
7       this section shall apply to transactions entered into on or  
8       after May 8, 2003.

9       **SEC. 302. PENALTY FOR FAILING TO DISCLOSE REPORT-**  
10           **ABLE TRANSACTION.**

11       (a) IN GENERAL.—Part I of subchapter B of chapter  
12       68 (relating to assessable penalties) is amended by insert-  
13       ing after section 6707 the following new section:

14       **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**  
15           **ABLE TRANSACTION INFORMATION WITH RE-**  
16           **TURN OR STATEMENT.**

17       “(a) IMPOSITION OF PENALTY.—Any person who  
18       fails to include on any return or statement any informa-  
19       tion with respect to a reportable transaction which is re-  
20       quired under section 6011 to be included with such return  
21       or statement shall pay a penalty in the amount determined  
22       under subsection (b).

23       “(b) AMOUNT OF PENALTY.—

1           “(1) IN GENERAL.—Except as provided in para-  
2           graphs (2) and (3), the amount of the penalty under  
3           subsection (a) shall be \$50,000.

4           “(2) LISTED TRANSACTION.—The amount of  
5           the penalty under subsection (a) with respect to a  
6           listed transaction shall be \$100,000.

7           “(3) INCREASE IN PENALTY FOR LARGE ENTI-  
8           TIES AND HIGH NET WORTH INDIVIDUALS.—

9           “(A) IN GENERAL.—In the case of a fail-  
10          ure under subsection (a) by—

11                   “(i) a large entity, or

12                   “(ii) a high net worth individual,

13          the penalty under paragraph (1) or (2) shall be  
14          twice the amount determined without regard to  
15          this paragraph.

16          “(B) LARGE ENTITY.—For purposes of  
17          subparagraph (A), the term ‘large entity’  
18          means, with respect to any taxable year, a per-  
19          son (other than a natural person) with gross re-  
20          ceipts in excess of \$10,000,000 for the taxable  
21          year in which the reportable transaction occurs  
22          or the preceding taxable year. Rules similar to  
23          the rules of paragraph (2) and subparagraphs  
24          (B), (C), and (D) of paragraph (3) of section

1           448(c) shall apply for purposes of this subpara-  
2           graph.

3           “(C) HIGH NET WORTH INDIVIDUAL.—For  
4           purposes of subparagraph (A), the term ‘high  
5           net worth individual’ means, with respect to a  
6           reportable transaction, a natural person whose  
7           net worth exceeds \$2,000,000 immediately be-  
8           fore the transaction.

9           “(c) DEFINITIONS.—For purposes of this section—

10          “(1) REPORTABLE TRANSACTION.—The term  
11          ‘reportable transaction’ means any transaction with  
12          respect to which information is required to be in-  
13          cluded with a return or statement because, as deter-  
14          mined under regulations prescribed under section  
15          6011, such transaction is of a type which the Sec-  
16          retary determines as having a potential for tax  
17          avoidance or evasion.

18          “(2) LISTED TRANSACTION.—Except as pro-  
19          vided in regulations, the term ‘listed transaction’  
20          means a reportable transaction which is the same as,  
21          or substantially similar to, a transaction specifically  
22          identified by the Secretary as a tax avoidance trans-  
23          action for purposes of section 6011.

24          “(d) AUTHORITY TO RESCIND PENALTY.—

1           “(1) IN GENERAL.—The Commissioner of In-  
2           ternal Revenue may rescind all or any portion of any  
3           penalty imposed by this section with respect to any  
4           violation if—

5                   “(A) the violation is with respect to a re-  
6                   portable transaction other than a listed trans-  
7                   action,

8                   “(B) the person on whom the penalty is  
9                   imposed has a history of complying with the re-  
10                  quirements of this title,

11                  “(C) it is shown that the violation is due  
12                  to an unintentional mistake of fact;

13                  “(D) imposing the penalty would be  
14                  against equity and good conscience, and

15                  “(E) rescinding the penalty would promote  
16                  compliance with the requirements of this title  
17                  and effective tax administration.

18           “(2) DISCRETION.—The exercise of authority  
19           under paragraph (1) shall be at the sole discretion  
20           of the Commissioner and may be delegated only to  
21           the head of the Office of Tax Shelter Analysis. The  
22           Commissioner, in the Commissioner’s sole discretion,  
23           may establish a procedure to determine if a penalty  
24           should be referred to the Commissioner or the head

1 of such Office for a determination under paragraph  
2 (1).

3 “(3) NO APPEAL.—Notwithstanding any other  
4 provision of law, any determination under this sub-  
5 section may not be reviewed in any administrative or  
6 judicial proceeding.

7 “(4) RECORDS.—If a penalty is rescinded under  
8 paragraph (1), the Commissioner shall place in the  
9 file in the Office of the Commissioner the opinion of  
10 the Commissioner or the head of the Office of Tax  
11 Shelter Analysis with respect to the determination,  
12 including—

13 “(A) the facts and circumstances of the  
14 transaction,

15 “(B) the reasons for the rescission, and

16 “(C) the amount of the penalty rescinded.

17 “(5) REPORT.—The Commissioner shall each  
18 year report to the Committee on Ways and Means  
19 of the House of Representatives and the Committee  
20 on Finance of the Senate—

21 “(A) a summary of the total number and  
22 aggregate amount of penalties imposed, and re-  
23 scinded, under this section, and

1                   “(B) a description of each penalty re-  
2                   scinded under this subsection and the reasons  
3                   therefor.

4           “(e) PENALTY REPORTED TO SEC.—In the case of  
5 a person—

6                   “(1) which is required to file periodic reports  
7                   under section 13 or 15(d) of the Securities Ex-  
8                   change Act of 1934 or is required to be consolidated  
9                   with another person for purposes of such reports,  
10                  and

11                  “(2) which—

12                   “(A) is required to pay a penalty under  
13                   this section with respect to a listed transaction,

14                   “(B) is required to pay a penalty under  
15                   section 6662A with respect to any reportable  
16                   transaction at a rate prescribed under section  
17                   6662A(c), or

18                   “(C) is required to pay a penalty under  
19                   section 6662B with respect to any noneconomic  
20                   substance transaction,

21 the requirement to pay such penalty shall be disclosed in  
22 such reports filed by such person for such periods as the  
23 Secretary shall specify. Failure to make a disclosure in  
24 accordance with the preceding sentence shall be treated

1 as a failure to which the penalty under subsection (b)(2)  
2 applies.

3 “(f) COORDINATION WITH OTHER PENALTIES.—The  
4 penalty imposed by this section is in addition to any pen-  
5 alty imposed under this title.”.

6 (b) CONFORMING AMENDMENT.—The table of sec-  
7 tions for part I of subchapter B of chapter 68 is amended  
8 by inserting after the item relating to section 6707 the  
9 following:

“Sec. 6707A. Penalty for failure to include reportable transaction  
information with return or statement.”.

10 (c) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to returns and statements the due  
12 date for which is after the date of the enactment of this  
13 Act.

14 **SEC. 303. ACCURACY-RELATED PENALTY FOR LISTED**  
15 **TRANSACTIONS AND OTHER REPORTABLE**  
16 **TRANSACTIONS HAVING A SIGNIFICANT TAX**  
17 **AVOIDANCE PURPOSE.**

18 (a) IN GENERAL.—Subchapter A of chapter 68 is  
19 amended by inserting after section 6662 the following new  
20 section:

1 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**  
2 **ALTY ON UNDERSTATEMENTS WITH RESPECT**  
3 **TO REPORTABLE TRANSACTIONS.**

4 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a  
5 reportable transaction understatement for any taxable  
6 year, there shall be added to the tax an amount equal to  
7 20 percent of the amount of such understatement.

8 “(b) REPORTABLE TRANSACTION UNDERSTATE-  
9 MENT.—For purposes of this section—

10 “(1) IN GENERAL.—The term ‘reportable trans-  
11 action understatement’ means the sum of—

12 “(A) the product of—

13 “(i) the amount of the increase (if  
14 any) in taxable income which results from  
15 a difference between the proper tax treat-  
16 ment of an item to which this section ap-  
17 plies and the taxpayer’s treatment of such  
18 item (as shown on the taxpayer’s return of  
19 tax), and

20 “(ii) the highest rate of tax imposed  
21 by section 1 (section 11 in the case of a  
22 taxpayer which is a corporation), and

23 “(B) the amount of the decrease (if any)  
24 in the aggregate amount of credits determined  
25 under subtitle A which results from a difference  
26 between the taxpayer’s treatment of an item to



1           which this section applies (as shown on the tax-  
2           payer's return of tax) and the proper tax treat-  
3           ment of such item.

4           For purposes of subparagraph (A), any reduction of  
5           the excess of deductions allowed for the taxable year  
6           over gross income for such year, and any reduction  
7           in the amount of capital losses which would (without  
8           regard to section 1211) be allowed for such year,  
9           shall be treated as an increase in taxable income.

10           “(2) ITEMS TO WHICH SECTION APPLIES.—This  
11           section shall apply to any item which is attributable  
12           to—

13                   “(A) any listed transaction, and

14                   “(B) any reportable transaction (other  
15           than a listed transaction) if a significant pur-  
16           pose of such transaction is the avoidance or  
17           evasion of Federal income tax.

18           “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED  
19           AND OTHER AVOIDANCE TRANSACTIONS.—

20           “(1) IN GENERAL.—Subsection (a) shall be ap-  
21           plied by substituting ‘30 percent’ for ‘20 percent’  
22           with respect to the portion of any reportable trans-  
23           action understatement with respect to which the re-  
24           quirement of section 6664(d)(2)(A) is not met.

1           “(2) RULES APPLICABLE TO COMPROMISE OF  
2       PENALTY.—

3           “(A) IN GENERAL.—If the 1st letter of  
4       proposed deficiency which allows the taxpayer  
5       an opportunity for administrative review in the  
6       Internal Revenue Service Office of Appeals has  
7       been sent with respect to a penalty to which  
8       paragraph (1) applies, only the Commissioner  
9       of Internal Revenue may compromise all or any  
10      portion of such penalty.

11          “(B) APPLICABLE RULES.—The rules of  
12      paragraphs (2), (3), (4), and (5) of section  
13      6707A(d) shall apply for purposes of subpara-  
14      graph (A).

15          “(d) DEFINITIONS OF REPORTABLE AND LISTED  
16      TRANSACTIONS.—For purposes of this section, the terms  
17      ‘reportable transaction’ and ‘listed transaction’ have the  
18      respective meanings given to such terms by section  
19      6707A(c).

20          “(e) SPECIAL RULES.—

21           “(1) COORDINATION WITH PENALTIES, ETC.,  
22      ON OTHER UNDERSTATEMENTS.—In the case of an  
23      understatement (as defined in section 6662(d)(2))—

24           “(A) the amount of such understatement  
25      (determined without regard to this paragraph)

1 shall be increased by the aggregate amount of  
2 reportable transaction understatements and  
3 noneconomic substance transaction understate-  
4 ments for purposes of determining whether  
5 such understatement is a substantial under-  
6 statement under section 6662(d)(1), and

7 “(B) the addition to tax under section  
8 6662(a) shall apply only to the excess of the  
9 amount of the substantial understatement (if  
10 any) after the application of subparagraph (A)  
11 over the aggregate amount of reportable trans-  
12 action understatements and noneconomic sub-  
13 stance transaction understatements.

14 “(2) COORDINATION WITH OTHER PEN-  
15 ALTIES.—

16 “(A) APPLICATION OF FRAUD PENALTY.—  
17 References to an underpayment in section 6663  
18 shall be treated as including references to a re-  
19 reportable transaction understatement and a non-  
20 economic substance transaction understatement.

21 “(B) NO DOUBLE PENALTY.—This section  
22 shall not apply to any portion of an understate-  
23 ment on which a penalty is imposed under sec-  
24 tion 6662B or 6663.

1           “(3) SPECIAL RULE FOR AMENDED RE-  
2           TURNS.—Except as provided in regulations, in no  
3           event shall any tax treatment included with an  
4           amendment or supplement to a return of tax be  
5           taken into account in determining the amount of any  
6           reportable transaction understatement or non-  
7           economic substance transaction understatement if  
8           the amendment or supplement is filed after the ear-  
9           lier of the date the taxpayer is first contacted by the  
10          Secretary regarding the examination of the return or  
11          such other date as is specified by the Secretary.

12           “(4) NONECONOMIC SUBSTANCE TRANS-  
13          ACTION UNDERSTATEMENT.—For purposes of  
14          this subsection, the term ‘noneconomic sub-  
15          stance transaction understatement’ has the  
16          meaning given such term by section 6662B(c).

17           “(5) CROSS REFERENCE.—

**“For reporting of section 6662A(c) penalty to the  
Securities and Exchange Commission, see section  
6707A(e).”.**

18          (b) DETERMINATION OF OTHER UNDERSTATE-  
19          MENTS.—Subparagraph (A) of section 6662(d)(2) is  
20          amended by adding at the end the following flush sen-  
21          tence:

22           “The excess under the preceding sentence shall  
23           be determined without regard to items to which  
24           section 6662A applies and without regard to

1 items with respect to which a penalty is im-  
2 posed by section 6662B.”.

3 (c) REASONABLE CAUSE EXCEPTION.—

4 (1) IN GENERAL.—Section 6664 is amended by  
5 adding at the end the following new subsection:

6 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-  
7 ABLE TRANSACTION UNDERSTATEMENTS.—

8 “(1) IN GENERAL.—No penalty shall be im-  
9 posed under section 6662A with respect to any por-  
10 tion of a reportable transaction understatement if it  
11 is shown that there was a reasonable cause for such  
12 portion and that the taxpayer acted in good faith  
13 with respect to such portion.

14 “(2) SPECIAL RULES.—Paragraph (1) shall not  
15 apply to any reportable transaction understatement  
16 unless—

17 “(A) the relevant facts affecting the tax  
18 treatment of the item are adequately disclosed  
19 in accordance with the regulations prescribed  
20 under section 6011,

21 “(B) there is or was substantial authority  
22 for such treatment, and

23 “(C) the taxpayer reasonably believed that  
24 such treatment was more likely than not the  
25 proper treatment.

1 A taxpayer failing to adequately disclose in accord-  
2 ance with section 6011 shall be treated as meeting  
3 the requirements of subparagraph (A) if the penalty  
4 for such failure was rescinded under section  
5 6707A(d).

6 “(3) RULES RELATING TO REASONABLE BE-  
7 LIEF.—For purposes of paragraph (2)(C)—

8 “(A) IN GENERAL.—A taxpayer shall be  
9 treated as having a reasonable belief with re-  
10 spect to the tax treatment of an item only if  
11 such belief—

12 “(i) is based on the facts and law that  
13 exist at the time the return of tax which  
14 includes such tax treatment is filed, and

15 “(ii) relates solely to the taxpayer’s  
16 chances of success on the merits of such  
17 treatment and does not take into account  
18 the possibility that a return will not be au-  
19 dited, such treatment will not be raised on  
20 audit, or such treatment will be resolved  
21 through settlement if it is raised.

22 “(B) CERTAIN OPINIONS MAY NOT BE RE-  
23 LIED UPON.—

24 “(i) IN GENERAL.—An opinion of a  
25 tax advisor may not be relied upon to es-

1           tablish the reasonable belief of a taxpayer  
2           if—

3                       “(I) the tax advisor is described  
4                       in clause (ii), or

5                       “(II) the opinion is described in  
6                       clause (iii).

7                       “(ii) DISQUALIFIED TAX ADVISORS.—  
8           A tax advisor is described in this clause if  
9           the tax advisor—

10                      “(I) is a material advisor (within  
11                      the meaning of section 6111(b)(1))  
12                      who participates in the organization,  
13                      management, promotion, or sale of  
14                      the transaction or who is related  
15                      (within the meaning of section 267(b)  
16                      or 707(b)(1)) to any person who so  
17                      participates,

18                      “(II) is compensated directly or  
19                      indirectly by a material advisor with  
20                      respect to the transaction,

21                      “(III) has a fee arrangement  
22                      with respect to the transaction which  
23                      is contingent on all or part of the in-  
24                      tended tax benefits from the trans-  
25                      action being sustained, or

1 “(IV) as determined under regu-  
2 lations prescribed by the Secretary,  
3 has a continuing financial interest  
4 with respect to the transaction.

5 “(iii) DISQUALIFIED OPINIONS.—For  
6 purposes of clause (i), an opinion is dis-  
7 qualified if the opinion—

8 “(I) is based on unreasonable  
9 factual or legal assumptions (includ-  
10 ing assumptions as to future events),

11 “(II) unreasonably relies on rep-  
12 resentations, statements, findings, or  
13 agreements of the taxpayer or any  
14 other person,

15 “(III) does not identify and con-  
16 sider all relevant facts, or

17 “(IV) fails to meet any other re-  
18 quirement as the Secretary may pre-  
19 scribe.”.

20 (2) CONFORMING AMENDMENT.—The heading  
21 for subsection (c) of section 6664 is amended by in-  
22 serting “FOR UNDERPAYMENTS” after “EXCEP-  
23 TION”.

24 (d) CONFORMING AMENDMENTS.—



1           (1) Subparagraph (C) of section 461(i)(3) is  
2           amended by striking “section 6662(d)(2)(C)(iii)”  
3           and inserting “section 1274(b)(3)(C)”.

4           (2) Paragraph (3) of section 1274(b) is  
5           amended—

6                   (A) by striking “(as defined in section  
7                   6662(d)(2)(C)(iii))” in subparagraph (B)(i),  
8                   and

9                   (B) by adding at the end the following new  
10                  subparagraph:

11                   “(C) TAX SHELTER.—For purposes of sub-  
12                   paragraph (B), the term ‘tax shelter’ means—

13                           “(i) a partnership or other entity,

14                           “(ii) any investment plan or arrange-  
15                           ment, or

16                           “(iii) any other plan or arrangement,  
17                   if a significant purpose of such partnership, en-  
18                   tity, plan, or arrangement is the avoidance or  
19                   evasion of Federal income tax.”.

20           (3) Section 6662(d)(2) is amended by striking  
21           subparagraphs (C) and (D).

22           (4) Section 6664(c)(1) is amended by striking  
23           “this part” and inserting “section 6662 or 6663”.

(5) Subsection (b) of section 7525 is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

4 (6)(A) The heading for section 6662 is amend-  
5 ed to read as follows:

6   **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**  
7                   **ON UNDERPAYMENTS.”.**

8 (B) The table of sections for part II of sub-  
9 chapter A of chapter 68 is amended by striking the  
10 item relating to section 6662 and inserting the fol-  
11 lowing new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpayments.

“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.”.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

15 SEC. 304. PENALTY FOR UNDERSTATEMENTS ATTRIB-  
16 UTABLE TO TRANSACTIONS LACKING ECO-  
17 NOMIC SUBSTANCE, ETC.

18 (a) IN GENERAL.—Subchapter A of chapter 68 is  
19 amended by inserting after section 6662A the following  
20 new section:

1 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**  
2 **UTABLE TO TRANSACTIONS LACKING ECO-**  
3 **NOMIC SUBSTANCE, ETC.**

4 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an  
5 noneconomic substance transaction understatement for  
6 any taxable year, there shall be added to the tax an  
7 amount equal to 40 percent of the amount of such under-  
8 statement.

9 “(b) REDUCTION OF PENALTY FOR DISCLOSED  
10 TRANSACTIONS.—Subsection (a) shall be applied by sub-  
11 stituting ‘20 percent’ for ‘40 percent’ with respect to the  
12 portion of any noneconomic substance transaction under-  
13 statement with respect to which the relevant facts affect-  
14 ing the tax treatment of the item are adequately disclosed  
15 in the return or a statement attached to the return.

16 “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-  
17 DERSTATEMENT.—For purposes of this section—

18 “(1) IN GENERAL.—The term ‘noneconomic  
19 substance transaction understatement’ means any  
20 amount which would be an understatement under  
21 section 6662A(b)(1) if section 6662A were applied  
22 by taking into account items attributable to non-  
23 economic substance transactions rather than items  
24 to which section 6662A would apply without regard  
25 to this paragraph.

1           “(2) NONECONOMIC SUBSTANCE TRANS-  
2 ACTION.—The term ‘noneconomic substance trans-  
3 action’ means any transaction if—

4           “(A) there is a lack of economic substance  
5 (within the meaning of section 7701(n)(1)) for  
6 the transaction giving rise to the claimed ben-  
7 efit or the transaction was not respected under  
8 section 7701(n)(2), or

9           “(B) the transaction fails to meet the re-  
10 quirements of any similar rule of law.

11       “(d) RULES APPLICABLE TO COMPROMISE OF PEN-  
12 ALTY.—

13           “(1) IN GENERAL.—If the 1st letter of pro-  
14 posed deficiency which allows the taxpayer an oppor-  
15 tunity for administrative review in the Internal Rev-  
16 enue Service Office of Appeals has been sent with  
17 respect to a penalty to which this section applies,  
18 only the Commissioner of Internal Revenue may  
19 compromise all or any portion of such penalty.

20           “(2) APPLICABLE RULES.—The rules of para-  
21 graphs (2), (3), (4), and (5) of section 6707A(d)  
22 shall apply for purposes of paragraph (1).

23       “(e) COORDINATION WITH OTHER PENALTIES.—Ex-  
24 cept as otherwise provided in this part, the penalty im-

1 posed by this section shall be in addition to any other pen-  
2 alty imposed by this title.

3 “(f) CROSS REFERENCES.—

“**(1) For coordination of penalty with understate-  
ments under section 6662 and other special rules,  
see section 6662A(e).**

“**(2) For reporting of penalty imposed under this  
section to the Securities and Exchange Commission,  
see section 6707A(e).”.**

4 (b) CLERICAL AMENDMENT.—The table of sections  
5 for part II of subchapter A of chapter 68 is amended by  
6 inserting after the item relating to section 6662A the fol-  
7 lowing new item:

“Sec. 6662B. Penalty for understatements attributable to trans-  
actions lacking economic substance, etc.”.

8 (c) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to transactions entered into on or  
10 after May 8, 2003.

11 **SEC. 305. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**  
12 **MENT PENALTY FOR NONREPORTABLE**  
13 **TRANSACTIONS.**

14 (a) SUBSTANTIAL UNDERSTATEMENT OF CORPORA-  
15 TIONS.—Section 6662(d)(1)(B) (relating to special rule  
16 for corporations) is amended to read as follows:

17 “(B) SPECIAL RULE FOR CORPORA-  
18 TIONS.—In the case of a corporation other than  
19 an S corporation or a personal holding company  
20 (as defined in section 542), there is a substan-  
21 tial understatement of income tax for any tax-

1           able year if the amount of the understatement  
2           for the taxable year exceeds the lesser of—

3                   “(i) 10 percent of the tax required to  
4                   be shown on the return for the taxable  
5                   year (or, if greater, \$10,000), or

6                   “(ii) \$10,000,000.”.

7           (b) REDUCTION FOR UNDERSTATEMENT OF TAX-  
8   PAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED  
9   ITEM.—

10           (1) IN GENERAL.—Section 6662(d)(2)(B)(i)  
11           (relating to substantial authority) is amended to  
12           read as follows:

13                   “(i) the tax treatment of any item by  
14                   the taxpayer if the taxpayer had reason-  
15                   able belief that the tax treatment was more  
16                   likely than not the proper treatment, or”.

17           (2) CONFORMING AMENDMENT.—Section  
18           6662(d) is amended by adding at the end the fol-  
19           lowing new paragraph:

20                   “(3) SECRETARIAL LIST.—For purposes of this  
21           subsection, section 6664(d)(2), and section  
22           6694(a)(1), the Secretary may prescribe a list of po-  
23           sitions for which the Secretary believes there is not  
24           substantial authority or there is no reasonable belief  
25           that the tax treatment is more likely than not the

1 proper tax treatment. Such list (and any revisions  
2 thereof) shall be published in the Federal Register  
3 or the Internal Revenue Bulletin.”.

4 (c) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to taxable years beginning after  
6 the date of the enactment of this Act.

7 **SEC. 306. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**  
8 **PRIVILEGES RELATING TO TAXPAYER COM-**  
9 **MUNICATIONS.**

10 (a) IN GENERAL.—Section 7525(b) (relating to sec-  
11 tion not to apply to communications regarding corporate  
12 tax shelters) is amended to read as follows:

13 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS  
14 REGARDING TAX SHELTERS.—The privilege under sub-  
15 section (a) shall not apply to any written communication  
16 which is—

17 “(1) between a federally authorized tax practi-  
18 tioner and—

19 “(A) any person,

20 “(B) any director, officer, employee, agent,  
21 or representative of the person, or

22 “(C) any other person holding a capital or  
23 profits interest in the person, and

1 “(2) in connection with the promotion of the di-  
2 rect or indirect participation of the person in any  
3 tax shelter (as defined in section 1274(b)(3)(C)).”.

4 (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall apply to communications made on or  
6 after the date of the enactment of this Act.

7 **SEC. 307. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

8 (a) IN GENERAL.—Section 6111 (relating to registra-  
9 tion of tax shelters) is amended to read as follows:

10 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

11 “(a) IN GENERAL.—Each material advisor with re-  
12 spect to any reportable transaction shall make a return  
13 (in such form as the Secretary may prescribe) setting  
14 forth—

15 “(1) information identifying and describing the  
16 transaction,

17 “(2) information describing any potential tax  
18 benefits expected to result from the transaction, and

19 “(3) such other information as the Secretary  
20 may prescribe.

21 Such return shall be filed not later than the date specified  
22 by the Secretary.

23 “(b) DEFINITIONS.—For purposes of this section—

24 “(1) MATERIAL ADVISOR.—



1                   “(A) IN GENERAL.—The term ‘material  
2                   advisor’ means any person—

3                   “(i) who provides any material aid,  
4                   assistance, or advice with respect to orga-  
5                   nizing, promoting, selling, implementing,  
6                   or carrying out any reportable transaction,  
7                   and

8                   “(ii) who directly or indirectly derives  
9                   gross income in excess of the threshold  
10                  amount for such aid, assistance, or advice.

11                  “(B) THRESHOLD AMOUNT.—For purposes  
12                  of subparagraph (A), the threshold amount is—

13                  “(i) \$50,000 in the case of a report-  
14                  able transaction substantially all of the tax  
15                  benefits from which are provided to nat-  
16                  ural persons, and

17                  “(ii) \$250,000 in any other case.

18                  “(2) REPORTABLE TRANSACTION.—The term  
19                  ‘reportable transaction’ has the meaning given to  
20                  such term by section 6707A(c).

21                  “(c) REGULATIONS.—The Secretary may prescribe  
22                  regulations which provide—

23                  “(1) that only 1 person shall be required to  
24                  meet the requirements of subsection (a) in cases in

1       which 2 or more persons would otherwise be re-  
2       quired to meet such requirements,

3               “(2) exemptions from the requirements of this  
4       section, and

5               “(3) such rules as may be necessary or appro-  
6       priate to carry out the purposes of this section.”.

7       (b) CONFORMING AMENDMENTS.—

8               (1) The item relating to section 6111 in the  
9       table of sections for subchapter B of chapter 61 is  
10      amended to read as follows:

              “Sec. 6111. Disclosure of reportable transactions.”.

11              (2)(A) So much of section 6112 as precedes  
12      subsection (c) thereof is amended to read as follows:

13      **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**  
14                               **ACTIONS MUST KEEP LISTS OF ADVISEES.**

15              “(a) IN GENERAL.—Each material advisor (as de-  
16      fined in section 6111) with respect to any reportable  
17      transaction (as defined in section 6707A(c)) shall main-  
18      tain, in such manner as the Secretary may by regulations  
19      prescribe, a list—

20                      “(1) identifying each person with respect to  
21      whom such advisor acted as such a material advisor  
22      with respect to such transaction, and

23                      “(2) containing such other information as the  
24      Secretary may by regulations require.

1 This section shall apply without regard to whether a mate-  
2 rial advisor is required to file a return under section 6111  
3 with respect to such transaction.”.

4 (B) Section 6112 is amended by redesignating  
5 subsection (c) as subsection (b).

6 (C) Section 6112(b), as redesignated by sub-  
7 paragraph (B), is amended—

8 (i) by inserting “written” before “request”  
9 in paragraph (1)(A), and

10 (ii) by striking “shall prescribe” in para-  
11 graph (2) and inserting “may prescribe”.

12 (D) The item relating to section 6112 in the  
13 table of sections for subchapter B of chapter 61 is  
14 amended to read as follows:

“Sec. 6112. Material advisors of reportable transactions must  
keep lists of advisees.”.

15 (3)(A) The heading for section 6708 is amend-  
16 ed to read as follows:

17 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**  
18 **WITH RESPECT TO REPORTABLE TRANS-**  
19 **ACTIONS.”.**

20 (B) The item relating to section 6708 in the  
21 table of sections for part I of subchapter B of chap-  
22 ter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to  
reportable transactions.”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to transactions with respect to  
3 which material aid, assistance, or advice referred to in sec-  
4 tion 6111(b)(1)(A)(i) of the Internal Revenue Code of  
5 1986 (as added by this section) is provided after the date  
6 of the enactment of this Act.

7       **SEC. 308. MODIFICATIONS TO PENALTY FOR FAILURE TO**  
8                               **REGISTER TAX SHELTERS.**

9       (a) IN GENERAL.—Section 6707 (relating to failure  
10 to furnish information regarding tax shelters) is amended  
11 to read as follows:

12       **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**  
13                               **ING REPORTABLE TRANSACTIONS.**

14       “(a) IN GENERAL.—If a person who is required to  
15 file a return under section 6111(a) with respect to any  
16 reportable transaction—

17               “(1) fails to file such return on or before the  
18       date prescribed therefor, or

19               “(2) files false or incomplete information with  
20       the Secretary with respect to such transaction,

21       such person shall pay a penalty with respect to such return  
22       in the amount determined under subsection (b).

23       “(b) AMOUNT OF PENALTY.—

1           “(1) IN GENERAL.—Except as provided in para-  
2           graph (2), the penalty imposed under subsection (a)  
3           with respect to any failure shall be \$50,000.

4           “(2) LISTED TRANSACTIONS.—The penalty im-  
5           posed under subsection (a) with respect to any listed  
6           transaction shall be an amount equal to the greater  
7           of—

8                   “(A) \$200,000, or

9                   “(B) 50 percent of the gross income de-  
10           rived by such person with respect to aid, assist-  
11           ance, or advice which is provided with respect  
12           to the listed transaction before the date the re-  
13           turn including the transaction is filed under  
14           section 6111.

15           Subparagraph (B) shall be applied by substituting  
16           ‘75 percent’ for ‘50 percent’ in the case of an inten-  
17           tional failure or act described in subsection (a).

18           “(c) RESCISSION AUTHORITY.—The provisions of  
19           section 6707A(d) (relating to authority of Commissioner  
20           to rescind penalty) shall apply to any penalty imposed  
21           under this section.

22           “(d) REPORTABLE AND LISTED TRANSACTIONS.—  
23           The terms ‘reportable transaction’ and ‘listed transaction’  
24           have the respective meanings given to such terms by sec-  
25           tion 6707A(c).”.

1 (b) CLERICAL AMENDMENT.—The item relating to  
2 section 6707 in the table of sections for part I of sub-  
3 chapter B of chapter 68 is amended by striking “tax shel-  
4 ters” and inserting “reportable transactions”.

5 (c) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply to returns the due date for which  
7 is after the date of the enactment of this Act.

8 **SEC. 309. MODIFICATION OF PENALTY FOR FAILURE TO**  
9 **MAINTAIN LISTS OF INVESTORS.**

10 (a) IN GENERAL.—Subsection (a) of section 6708 is  
11 amended to read as follows:

12 “(a) IMPOSITION OF PENALTY.—

13 “(1) IN GENERAL.—If any person who is re-  
14 quired to maintain a list under section 6112(a) fails  
15 to make such list available upon written request to  
16 the Secretary in accordance with section  
17 6112(b)(1)(A) within 20 business days after the  
18 date of the Secretary’s request, such person shall  
19 pay a penalty of \$10,000 for each day of such fail-  
20 ure after such 20th day.

21 “(2) REASONABLE CAUSE EXCEPTION.—No  
22 penalty shall be imposed by paragraph (1) with re-  
23 spect to the failure on any day if such failure is due  
24 to reasonable cause.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to requests made after the date  
3 of the enactment of this Act.

4 **SEC. 310. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**  
5 **CONDUCT RELATED TO TAX SHELTERS AND**  
6 **REPORTABLE TRANSACTIONS.**

7 (a) IN GENERAL.—Section 7408 (relating to action  
8 to enjoin promoters of abusive tax shelters, etc.) is amend-  
9 ed by redesignating subsection (c) as subsection (d) and  
10 by striking subsections (a) and (b) and inserting the fol-  
11 lowing new subsections:

12 “(a) AUTHORITY TO SEEK INJUNCTION.—A civil ac-  
13 tion in the name of the United States to enjoin any person  
14 from further engaging in specified conduct may be com-  
15 menced at the request of the Secretary. Any action under  
16 this section shall be brought in the district court of the  
17 United States for the district in which such person resides,  
18 has his principal place of business, or has engaged in spec-  
19 ified conduct. The court may exercise its jurisdiction over  
20 such action (as provided in section 7402(a)) separate and  
21 apart from any other action brought by the United States  
22 against such person.

23 “(b) ADJUDICATION AND DECREE.—In any action  
24 under subsection (a), if the court finds—

1 “(1) that the person has engaged in any speci-  
2 fied conduct, and

3 “(2) that injunctive relief is appropriate to pre-  
4 vent recurrence of such conduct,

5 the court may enjoin such person from engaging in such  
6 conduct or in any other activity subject to penalty under  
7 this title.

8 “(c) SPECIFIED CONDUCT.—For purposes of this  
9 section, the term ‘specified conduct’ means any action, or  
10 failure to take action, subject to penalty under section  
11 6700, 6701, 6707, or 6708.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) The heading for section 7408 is amended to  
14 read as follows:

15 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**  
16 **LATED TO TAX SHELTERS AND REPORTABLE**  
17 **TRANSACTIONS.”.**

18 (2) The table of sections for subchapter A of  
19 chapter 67 is amended by striking the item relating  
20 to section 7408 and inserting the following new  
21 item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and  
reportable transactions.”.

22 (c) EFFECTIVE DATE.—The amendment made by  
23 this section shall take effect on the day after the date of  
24 the enactment of this Act.



1 **SEC. 311. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY**  
2 **INCOME TAX RETURN PREPARER.**

3 (a) STANDARDS CONFORMED TO TAXPAYER STAND-  
4 ARDS.—Section 6694(a) (relating to understatements due  
5 to unrealistic positions) is amended—

6 (1) by striking “realistic possibility of being  
7 sustained on its merits” in paragraph (1) and in-  
8 serting “reasonable belief that the tax treatment in  
9 such position was more likely than not the proper  
10 treatment”,

11 (2) by striking “or was frivolous” in paragraph  
12 (3) and inserting “or there was no reasonable basis  
13 for the tax treatment of such position”, and

14 (3) by striking “UNREALISTIC” in the heading  
15 and inserting “IMPROPER”.

16 (b) AMOUNT OF PENALTY.—Section 6694 is  
17 amended—

18 (1) by striking “\$250” in subsection (a) and in-  
19 serting “\$1,000”, and

20 (2) by striking “\$1,000” in subsection (b) and  
21 inserting “\$5,000”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to documents prepared after the  
24 date of the enactment of this Act.

1   **SEC. 312. PENALTY ON FAILURE TO REPORT INTERESTS IN**  
2                   **FOREIGN FINANCIAL ACCOUNTS.**

3           (a) IN GENERAL.—Section 5321(a)(5) of title 31,  
4 United States Code, is amended to read as follows:

5                   “(5) FOREIGN FINANCIAL AGENCY TRANS-  
6 ACTION VIOLATION.—

7                           “(A) PENALTY AUTHORIZED.—The Sec-  
8 retary of the Treasury may impose a civil  
9 money penalty on any person who violates, or  
10 causes any violation of, any provision of section  
11 5314.

12                           “(B) AMOUNT OF PENALTY.—

13                                   “(i) IN GENERAL.—Except as pro-  
14 vided in subparagraph (C), the amount of  
15 any civil penalty imposed under subpara-  
16 graph (A) shall not exceed \$5,000.

17                                   “(ii) REASONABLE CAUSE EXCEP-  
18 TION.—No penalty shall be imposed under  
19 subparagraph (A) with respect to any vio-  
20 lation if—

21   “(I) such violation was due to  
22 reasonable cause, and

23   “(II) the amount of the trans-  
24 action or the balance in the account  
25 at the time of the transaction was  
26 properly reported.

1           “(C) WILLFUL VIOLATIONS.—In the case  
2 of any person willfully violating, or willfully  
3 causing any violation of, any provision of sec-  
4 tion 5314—

5           “(i) the maximum penalty under sub-  
6 paragraph (B)(i) shall be increased to the  
7 greater of—

8           “(I) \$25,000, or

9           “(II) the amount (not exceeding  
10 \$100,000) determined under subpara-  
11 graph (D), and

12           “(ii) subparagraph (B)(ii) shall not  
13 apply.

14           “(D) AMOUNT.—The amount determined  
15 under this subparagraph is—

16           “(i) in the case of a violation involving  
17 a transaction, the amount of the trans-  
18 action, or

19           “(ii) in the case of a violation involv-  
20 ing a failure to report the existence of an  
21 account or any identifying information re-  
22 quired to be provided with respect to an  
23 account, the balance in the account at the  
24 time of the violation.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to violations occurring after the  
3 date of the enactment of this Act.

4 **SEC. 313. FRIVOLOUS TAX SUBMISSIONS.**

5 (a) CIVIL PENALTIES.—Section 6702 is amended to  
6 read as follows:

7 **“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

8 “(a) CIVIL PENALTY FOR FRIVOLOUS TAX RE-  
9 TURNS.—A person shall pay a penalty of \$5,000 if—

10 “(1) such person files what purports to be a re-  
11 turn of a tax imposed by this title but which—

12 “(A) does not contain information on  
13 which the substantial correctness of the self-as-  
14 sessment may be judged, or

15 “(B) contains information that on its face  
16 indicates that the self-assessment is substan-  
17 tially incorrect; and

18 “(2) the conduct referred to in paragraph (1)—

19 “(A) is based on a position which the Sec-  
20 retary has identified as frivolous under sub-  
21 section (c), or

22 “(B) reflects a desire to delay or impede  
23 the administration of Federal tax laws.

24 “(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS  
25 SUBMISSIONS.—

1           “(1) IMPOSITION OF PENALTY.—Except as pro-  
2       vided in paragraph (3), any person who submits a  
3       specified frivolous submission shall pay a penalty of  
4       \$5,000.

5           “(2) SPECIFIED FRIVOLOUS SUBMISSION.—For  
6       purposes of this section—

7           “(A) SPECIFIED FRIVOLOUS SUBMIS-  
8       SION.—The term ‘specified frivolous submis-  
9       sion’ means a specified submission if any por-  
10      tion of such submission—

11           “(i) is based on a position which the  
12      Secretary has identified as frivolous under  
13      subsection (c), or

14           “(ii) reflects a desire to delay or im-  
15      pede the administration of Federal tax  
16      laws.

17           “(B) SPECIFIED SUBMISSION.—The term  
18      ‘specified submission’ means—

19           “(i) a request for a hearing under—

20           “(I) section 6320 (relating to no-  
21      tice and opportunity for hearing upon  
22      filing of notice of lien), or

23           “(II) section 6330 (relating to  
24      notice and opportunity for hearing be-  
25      fore levy), and

1 “(ii) an application under—

2 “(I) section 6159 (relating to  
3 agreements for payment of tax liabil-  
4 ity in installments),

5 “(II) section 7122 (relating to  
6 compromises), or

7 “(III) section 7811 (relating to  
8 taxpayer assistance orders).

9 “(3) OPPORTUNITY TO WITHDRAW SUBMIS-  
10 SION.—If the Secretary provides a person with no-  
11 tice that a submission is a specified frivolous sub-  
12 mission and such person withdraws such submission  
13 within 30 days after such notice, the penalty im-  
14 posed under paragraph (1) shall not apply with re-  
15 spect to such submission.

16 “(c) LISTING OF FRIVOLOUS POSITIONS.—The Sec-  
17 retary shall prescribe (and periodically revise) a list of po-  
18 sitions which the Secretary has identified as being frivo-  
19 lous for purposes of this subsection. The Secretary shall  
20 not include in such list any position that the Secretary  
21 determines meets the requirement of section  
22 6662(d)(2)(B)(ii)(II).

23 “(d) REDUCTION OF PENALTY.—The Secretary may  
24 reduce the amount of any penalty imposed under this sec-  
25 tion if the Secretary determines that such reduction would

1 promote compliance with and administration of the Fed-  
2 eral tax laws.

3 “(e) PENALTIES IN ADDITION TO OTHER PEN-  
4 ALTIES.—The penalties imposed by this section shall be  
5 in addition to any other penalty provided by law.”.

6 (b) TREATMENT OF FRIVOLOUS REQUESTS FOR  
7 HEARINGS BEFORE LEVY.—

8 (1) FRIVOLOUS REQUESTS DISREGARDED.—

9 Section 6330 (relating to notice and opportunity for  
10 hearing before levy) is amended by adding at the  
11 end the following new subsection:

12 “(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—  
13 Notwithstanding any other provision of this section, if the  
14 Secretary determines that any portion of a request for a  
15 hearing under this section or section 6320 meets the re-  
16 quirement of clause (i) or (ii) of section 6702(b)(2)(A),  
17 then the Secretary may treat such portion as if it were  
18 never submitted and such portion shall not be subject to  
19 any further administrative or judicial review.”.

20 (2) PRECLUSION FROM RAISING FRIVOLOUS  
21 ISSUES AT HEARING.—Section 6330(c)(4) is  
22 amended—

23 (A) by striking “(A)” and inserting  
24 “(A)(i)”;

25 (B) by striking “(B)” and inserting “(ii)”;

1 (C) by striking the period at the end of the  
2 first sentence and inserting “; or”; and

3 (D) by inserting after subparagraph (A)(ii)  
4 (as so redesignated) the following:

5 “(B) the issue meets the requirement of  
6 clause (i) or (ii) of section 6702(b)(2)(A).”.

7 (3) STATEMENT OF GROUNDS.—Section  
8 6330(b)(1) is amended by striking “under sub-  
9 section (a)(3)(B)” and inserting “in writing under  
10 subsection (a)(3)(B) and states the grounds for the  
11 requested hearing”.

12 (c) TREATMENT OF FRIVOLOUS REQUESTS FOR  
13 HEARINGS UPON FILING OF NOTICE OF LIEN.—Section  
14 6320 is amended—

15 (1) in subsection (b)(1), by striking “under sub-  
16 section (a)(3)(B)” and inserting “in writing under  
17 subsection (a)(3)(B) and states the grounds for the  
18 requested hearing”, and

19 (2) in subsection (c), by striking “and (e)” and  
20 inserting “(e), and (g)”.

21 (d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR  
22 OFFERS-IN-COMPROMISE AND INSTALLMENT AGREE-  
23 MENTS.—Section 7122 is amended by adding at the end  
24 the following new subsection:



1       “(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwith-  
2 standing any other provision of this section, if the Sec-  
3 retary determines that any portion of an application for  
4 an offer-in-compromise or installment agreement sub-  
5 mitted under this section or section 6159 meets the re-  
6 quirement of clause (i) or (ii) of section 6702(b)(2)(A),  
7 then the Secretary may treat such portion as if it were  
8 never submitted and such portion shall not be subject to  
9 any further administrative or judicial review.”.

10       (e) CLERICAL AMENDMENT.—The table of sections  
11 for part I of subchapter B of chapter 68 is amended by  
12 striking the item relating to section 6702 and inserting  
13 the following new item:

“Sec. 6702. Frivolous tax submissions.”.

14       (f) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to submissions made and issues  
16 raised after the date on which the Secretary first pre-  
17 scribes a list under section 6702(c) of the Internal Rev-  
18 enue Code of 1986, as amended by subsection (a).

19 **SEC. 314. PENALTY ON PROMOTERS OF TAX SHELTERS.**

20       (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-  
21 TERS.—Section 6700(a) is amended by adding at the end  
22 the following new sentence: “Notwithstanding the first  
23 sentence, if an activity with respect to which a penalty  
24 imposed under this subsection involves a statement de-  
25 scribed in paragraph (2)(A), the amount of the penalty

1 shall be equal to 50 percent of the gross income derived  
2 (or to be derived) from such activity by the person on  
3 which the penalty is imposed.”.

4 (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall apply to activities after the date of the  
6 enactment of this Act.

7 **SEC. 315. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**  
8 **FOR WHICH LISTED TRANSACTIONS NOT RE-**  
9 **PORTED.**

10 (a) IN GENERAL.—Section 6501(e)(1) (relating to  
11 substantial omission of items for income taxes) is amended  
12 by adding at the end the following new subparagraph:

13 “(C) LISTED TRANSACTIONS.—If a tax-  
14 payer fails to include on any return or state-  
15 ment for any taxable year any information with  
16 respect to a listed transaction (as defined in  
17 section 6707A(c)(2)) which is required under  
18 section 6011 to be included with such return or  
19 statement, the tax for such taxable year may be  
20 assessed, or a proceeding in court for collection  
21 of such tax may be begun without assessment,  
22 at any time within 6 years after the time the  
23 return is filed. This subparagraph shall not  
24 apply to any taxable year if the time for assess-  
25 ment or beginning the proceeding in court has

1           expired before the time a transaction is treated  
2           as a listed transaction under section 6011.”.

3           (b) **EFFECTIVE DATE.**—The amendment made by  
4 this section shall apply to transactions in taxable years  
5 beginning after the date of the enactment of this Act.

6 **SEC. 316. DENIAL OF DEDUCTION FOR INTEREST ON UN-**  
7 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**  
8 **CLOSED REPORTABLE AND NONECONOMIC**  
9 **SUBSTANCE TRANSACTIONS.**

10          (a) **IN GENERAL.**—Section 163 (relating to deduction  
11 for interest) is amended by redesignating subsection (m)  
12 as subsection (n) and by inserting after subsection (l) the  
13 following new subsection:

14          “(m) **INTEREST ON UNPAID TAXES ATTRIBUTABLE**  
15 **TO NONDISCLOSED REPORTABLE TRANSACTIONS AND**  
16 **NONECONOMIC SUBSTANCE TRANSACTIONS.**—No deduc-  
17 tion shall be allowed under this chapter for any interest  
18 paid or accrued under section 6601 on any underpayment  
19 of tax which is attributable to—

20               “(1) the portion of any reportable transaction  
21 understatement (as defined in section 6662A(b))  
22 with respect to which the requirement of section  
23 6664(d)(2)(A) is not met, or

24               “(2) any noneconomic substance transaction  
25 understatement (as defined in section 6662B(c)).”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to transactions in taxable years  
3 beginning after the date of the enactment of this Act.

4 **Subtitle B—Enron-Related Tax**  
5 **Shelter Provisions**

6 **SEC. 321. LIMITATION ON TRANSFER OR IMPORTATION OF**  
7 **BUILT-IN LOSSES.**

8 (a) IN GENERAL.—Section 362 (relating to basis to  
9 corporations) is amended by adding at the end the fol-  
10 lowing new subsection:

11 “(e) LIMITATIONS ON BUILT-IN LOSSES.—

12 “(1) LIMITATION ON IMPORTATION OF BUILT-  
13 IN LOSSES.—

14 “(A) IN GENERAL.—If in any transaction  
15 described in subsection (a) or (b) there would  
16 (but for this subsection) be an importation of a  
17 net built-in loss, the basis of each property de-  
18 scribed in subparagraph (B) which is acquired  
19 in such transaction shall (notwithstanding sub-  
20 sections (a) and (b)) be its fair market value  
21 immediately after such transaction.

22 “(B) PROPERTY DESCRIBED.—For pur-  
23 poses of subparagraph (A), property is de-  
24 scribed in this subparagraph if—

1                   “(i) gain or loss with respect to such  
2                   property is not subject to tax under this  
3                   subtitle in the hands of the transferor im-  
4                   mediately before the transfer, and

5                   “(ii) gain or loss with respect to such  
6                   property is subject to such tax in the  
7                   hands of the transferee immediately after  
8                   such transfer.

9                   In any case in which the transferor is a part-  
10                  nership, the preceding sentence shall be applied  
11                  by treating each partner in such partnership as  
12                  holding such partner’s proportionate share of  
13                  the property of such partnership.

14                 “(C) IMPORTATION OF NET BUILT-IN  
15                 LOSS.—For purposes of subparagraph (A),  
16                 there is an importation of a net built-in loss in  
17                 a transaction if the transferee’s aggregate ad-  
18                 justed bases of property described in subpara-  
19                 graph (B) which is transferred in such trans-  
20                 action would (but for this paragraph) exceed  
21                 the fair market value of such property imme-  
22                 diately after such transaction.”.

23                 “(2) LIMITATION ON TRANSFER OF BUILT-IN  
24                 LOSSES IN SECTION 351 TRANSACTIONS.—

25                 “(A) IN GENERAL.—If—

1                   “(i) property is transferred by a  
2                   transferor in any transaction which is de-  
3                   scribed in subsection (a) and which is not  
4                   described in paragraph (1) of this sub-  
5                   section, and

6                   “(ii) the transferee’s aggregate ad-  
7                   justed bases of such property so trans-  
8                   ferred would (but for this paragraph) ex-  
9                   ceed the fair market value of such property  
10                  immediately after such transaction,

11                 then, notwithstanding subsection (a), the trans-  
12                 feree’s aggregate adjusted bases of the property  
13                 so transferred shall not exceed the fair market  
14                 value of such property immediately after such  
15                 transaction.

16                 “(B) ALLOCATION OF BASIS REDUC-  
17                 TION.—The aggregate reduction in basis by  
18                 reason of subparagraph (A) shall be allocated  
19                 among the property so transferred in proportion  
20                 to their respective built-in losses immediately  
21                 before the transaction.

22                 “(C) EXCEPTION FOR TRANSFERS WITHIN  
23                 AFFILIATED GROUP.—Subparagraph (A) shall  
24                 not apply to any transaction if the transferor  
25                 owns stock in the transferee meeting the re-

1           quirements of section 1504(a)(2). In the case of  
2           property to which subparagraph (A) does not  
3           apply by reason of the preceding sentence, the  
4           transferor's basis in the stock received for such  
5           property shall not exceed its fair market value  
6           immediately after the transfer.”.

7           (b) COMPARABLE TREATMENT WHERE LIQUIDA-  
8   TION.—Paragraph (1) of section 334(b) (relating to liq-  
9   uidation of subsidiary) is amended to read as follows:

10           “(1) IN GENERAL.—If property is received by a  
11          corporate distributee in a distribution in a complete  
12          liquidation to which section 332 applies (or in a  
13          transfer described in section 337(b)(1)), the basis of  
14          such property in the hands of such distributee shall  
15          be the same as it would be in the hands of the trans-  
16          feror; except that the basis of such property in the  
17          hands of such distributee shall be the fair market  
18          value of the property at the time of the  
19          distribution—

20                   “(A) in any case in which gain or loss is  
21          recognized by the liquidating corporation with  
22          respect to such property, or

23                   “(B) in any case in which the liquidating  
24          corporation is a foreign corporation, the cor-  
25          porate distributee is a domestic corporation,

1           and the corporate distributee's aggregate ad-  
2           justed bases of property described in section  
3           362(e)(1)(B) which is distributed in such liq-  
4           uidation would (but for this subparagraph) ex-  
5           ceed the fair market value of such property im-  
6           mediately after such liquidation.”.

7           (c) EFFECTIVE DATE.—The amendments made by  
8           this section shall apply to transactions after February 13,  
9           2003.

10   **SEC. 322. NO REDUCTION OF BASIS UNDER SECTION 734 IN**  
11                   **STOCK HELD BY PARTNERSHIP IN COR-**  
12                   **PORATE PARTNER.**

13           (a) IN GENERAL.—Section 755 is amended by adding  
14           at the end the following new subsection:

15           “(c) NO ALLOCATION OF BASIS DECREASE TO  
16           STOCK OF CORPORATE PARTNER.—In making an alloca-  
17           tion under subsection (a) of any decrease in the adjusted  
18           basis of partnership property under section 734(b)—

19                   “(1) no allocation may be made to stock in a  
20           corporation (or any person which is related (within  
21           the meaning of section 267(b) or 707(b)(1)) to such  
22           corporation) which is a partner in the partnership,  
23           and



1           “(2) any amount not allocable to stock by rea-  
2           son of paragraph (1) shall be allocated under sub-  
3           section (a) to other partnership property.

4           Gain shall be recognized to the partnership to the extent  
5           that the amount required to be allocated under paragraph  
6           (2) to other partnership property exceeds the aggregate  
7           adjusted basis of such other property immediately before  
8           the allocation required by paragraph (2).”.

9           (b) EFFECTIVE DATE.—The amendment made by  
10          this section shall apply to distributions after February 13,  
11          2003.

12       **SEC. 323. REPEAL OF SPECIAL RULES FOR FASITS.**

13          (a) IN GENERAL.—Part V of subchapter M of chap-  
14          ter 1 (relating to financial asset securitization investment  
15          trusts) is hereby repealed.

16          (b) CONFORMING AMENDMENTS.—

17               (1) Paragraph (6) of section 56(g) is amended  
18               by striking “REMIC, or FASIT” and inserting “or  
19               REMIC”.

20               (2) Clause (ii) of section 382(l)(4)(B) is amend-  
21               ed by striking “a REMIC to which part IV of sub-  
22               chapter M applies, or a FASIT to which part V of  
23               subchapter M applies,” and inserting “or a REMIC  
24               to which part IV of subchapter M applies,”.

1           (3) Paragraph (1) of section 582(c) is amended  
2       by striking “, and any regular interest in a  
3       FASIT,”.

4           (4) Subparagraph (E) of section 856(c)(5) is  
5       amended by striking the last sentence.

6           (5) Paragraph (5) of section 860G(a) is amend-  
7       ed by adding “and” at the end of subparagraph (B),  
8       by striking “, and” at the end of subparagraph (C)  
9       and inserting a period, and by striking subparagraph  
10      (D).

11          (6) Subparagraph (C) of section 1202(e)(4) is  
12      amended by striking “REMIC, or FASIT” and in-  
13      serting “or REMIC”.

14          (7) Subparagraph (C) of section 7701(a)(19) is  
15      amended by adding “and” at the end of clause (ix),  
16      by striking “, and” at the end of clause (x) and in-  
17      serting a period, and by striking clause (xi).

18          (8) The table of parts for subchapter M of  
19      chapter 1 is amended by striking the item relating  
20      to part V.

21      (c) EFFECTIVE DATE.—

22          (1) IN GENERAL.—Except as provided in para-  
23      graph (2), the amendments made by this section  
24      shall take effect on February 14, 2003.

25          (2) EXCEPTION FOR EXISTING FASITS.—

1 (A) IN GENERAL.—Paragraph (1) shall not  
2 apply to any FASIT in existence on the date of  
3 the enactment of this Act to the extent that  
4 regular interests issued by the FASIT before  
5 such date continue to remain outstanding in ac-  
6 cordance with the original terms of issuance.

7 (B) TRANSFER OF ADDITIONAL ASSETS  
8 NOT PERMITTED.—Except as provided in regu-  
9 lations prescribed by the Secretary of the  
10 Treasury or the Secretary’s delegate, subpara-  
11 graph (A) shall cease to apply as of the earliest  
12 date after the date of the enactment of this Act  
13 that any property is transferred to the FASIT.

14 **SEC. 324. EXPANDED DISALLOWANCE OF DEDUCTION FOR**  
15 **INTEREST ON CONVERTIBLE DEBT.**

16 (a) IN GENERAL.—Paragraph (2) of section 163(l)  
17 is amended by striking “or a related party” and inserting  
18 “or equity held by the issuer (or any related party) in any  
19 other person”.

20 (b) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED  
21 BY DEALERS IN SECURITIES.—Section 163(l) is amended  
22 by redesignating paragraphs (4) and (5) as paragraphs  
23 (5) and (6) and by inserting after paragraph (3) the fol-  
24 lowing new paragraph:

“(4) EXCEPTION FOR CERTAIN INSTRUMENTS  
ISSUED BY DEALERS IN SECURITIES.—For purposes  
of this subsection, the term ‘disqualified debt instru-  
ment’ does not include indebtedness issued by a  
dealer in securities (or a related party) which is pay-  
able in, or by reference to, equity (other than equity  
of the issuer or a related party) held by such dealer  
in its capacity as a dealer in securities. For purposes  
of this paragraph, the term ‘dealer in securities’ has  
the meaning given such term by section 475.”.

(c) CONFORMING AMENDMENT.—Paragraph (3) of section 163(l) is amended by striking “or a related party” in the material preceding subparagraph (A) and inserting “or any other person”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to debt instruments issued after February 13, 2003.

18 SEC. 325. EXPANDED AUTHORITY TO DISALLOW TAX BENE-  
19 FITS UNDER SECTION 269.

(a) IN GENERAL.—Subsection (a) of section 269 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

23           “(a) IN GENERAL.—If—

24 “(1)(A) any person acquires stock in a corpora-  
25 tion, or

1           “(B) any corporation acquires, directly or indi-  
2           rectly, property of another corporation and the basis  
3           of such property, in the hands of the acquiring cor-  
4           poration, is determined by reference to the basis in  
5           the hands of the transferor corporation, and

6           “(2) the principal purpose for which such acqui-  
7           sition was made is evasion or avoidance of Federal  
8           income tax by securing the benefit of a deduction,  
9           credit, or other allowance,  
10          then the Secretary may disallow such deduction, credit,  
11          or other allowance.”.

12          (b) EFFECTIVE DATE.—The amendment made by  
13          this section shall apply to stock and property acquired  
14          after February 13, 2003.

15      **SEC. 326. MODIFICATIONS OF CERTAIN RULES RELATING**  
16                      **TO CONTROLLED FOREIGN CORPORATIONS.**

17          (a) LIMITATION ON EXCEPTION FROM PFIC RULES  
18          FOR UNITED STATES SHAREHOLDERS OF CONTROLLED  
19          FOREIGN CORPORATIONS.—Paragraph (2) of section  
20          1297(e) (relating to passive investment company) is  
21          amended by adding at the end the following flush sen-  
22          tence:

23           “Such term shall not include any period if there is  
24           only a remote likelihood of an inclusion in gross in-

1       come under section 951(a)(1)(A)(i) of subpart F in-  
2       come of such corporation for such period.”.

3       (b) **EFFECTIVE DATE.**—The amendment made by  
4 this section shall apply to taxable years on controlled for-  
5 eign corporation beginning after February 13, 2003, and  
6 to taxable years of United States shareholder in which or  
7 with which such taxable years of controlled foreign cor-  
8 porations end.

9       **SEC. 327. CONTROLLED ENTITIES INELIGIBLE FOR REIT**  
10                   **STATUS.**

11       (a) **IN GENERAL.**—Subsection (a) of section 856 (re-  
12 lating to definition of real estate investment trust) is  
13 amended by striking “and” at the end of paragraph (6),  
14 by redesignating paragraph (7) as paragraph (8), and by  
15 inserting after paragraph (6) the following new paragraph:

16               “(7) which is not a controlled entity (as defined  
17       in subsection (1)); and”.

18       (b) **CONTROLLED ENTITY.**—Section 856 is amended  
19 by adding at the end the following new subsection:

20               “(1) **CONTROLLED ENTITY.**—

21               “(1) **IN GENERAL.**—For purposes of subsection  
22       (a)(7), an entity is a controlled entity if, at any time  
23       during the taxable year, one person (other than a  
24       qualified entity)—

1           “(A) in the case of a corporation, owns  
2 stock—

3           “(i) possessing at least 50 percent of  
4 the total voting power of the stock of such  
5 corporation, or

6           “(ii) having a value equal to at least  
7 50 percent of the total value of the stock  
8 of such corporation, or

9           “(B) in the case of a trust, owns beneficial  
10 interests in the trust which would meet the re-  
11 quirements of subparagraph (A) if such inter-  
12 ests were stock.

13           “(2) QUALIFIED ENTITY.—For purposes of  
14 paragraph (1), the term ‘qualified entity’ means—

15           “(A) any real estate investment trust, and

16           “(B) any partnership in which one real es-  
17 tate investment trust owns at least 50 percent  
18 of the capital and profits interests in the part-  
19 nership.

20           “(3) ATTRIBUTION RULES.—For purposes of  
21 this paragraphs (1) and (2)—

22           “(A) IN GENERAL.—Rules similar to the  
23 rules of subsections (d)(5) and (h)(3) shall  
24 apply; except that section 318(a)(3)(C) shall  
25 not be applied under such rules to treat stock

1 owned by a qualified entity as being owned by  
2 a person which is not a qualified entity.

3 “(B) STAPLED ENTITIES.—A group of en-  
4 tities which are stapled entities (as defined in  
5 section 269B(c)(2)) shall be treated as one per-  
6 son.

7 “(4) EXCEPTION FOR CERTAIN NEW REITS.—

8 “(A) IN GENERAL.—The term ‘controlled  
9 entity’ shall not include an incubator REIT.

10 “(B) INCUBATOR REIT.—A corporation  
11 shall be treated as an incubator REIT for any  
12 taxable year during the eligibility period if it  
13 meets all the following requirements for such  
14 year:

15 “(i) The corporation elects to be treat-  
16 ed as an incubator REIT.

17 “(ii) The corporation has only voting  
18 common stock outstanding.

19 “(iii) Not more than 50 percent of the  
20 corporation’s real estate assets consist of  
21 mortgages.

22 “(iv) From not later than the begin-  
23 ning of the last half of the second taxable  
24 year, at least 10 percent of the corpora-  
25 tion’s capital is provided by lenders or eq-



1           uity investors who are unrelated to the cor-  
2           poration's largest shareholder.

3           “(v) The corporation annually in-  
4           creases the value of its real estate assets  
5           by at least 10 percent.

6           “(vi) The directors of the corporation  
7           adopt a resolution setting forth an intent  
8           to engage in a going public transaction.

9           No election may be made with respect to any  
10          REIT if an election under this subsection was  
11          in effect for any predecessor of such REIT.

12          “(C) ELIGIBILITY PERIOD.—

13                 “(i) IN GENERAL.—The eligibility pe-  
14                 riod (for which an incubator REIT election  
15                 can be made) begins with the REIT's sec-  
16                 ond taxable year and ends at the close of  
17                 the REIT's third taxable year, except that  
18                 the REIT may, subject to clauses (ii), (iii),  
19                 and (iv), elect to extend such period for an  
20                 additional 2 taxable years.

21                 “(ii) GOING PUBLIC TRANSACTION.—

22                 A REIT may not elect to extend the eligi-  
23                 bility period under clause (i) unless it en-  
24                 ters into an agreement with the Secretary  
25                 that if it does not engage in a going public

1 transaction by the end of the extended eli-  
2 gibility period, it shall pay Federal income  
3 taxes for the 2 years of the extended eligi-  
4 bility period as if it had not made an incu-  
5 bator REIT election and had ceased to  
6 qualify as a REIT for those 2 taxable  
7 years.

8 “(iii) RETURNS, INTEREST, AND NO-  
9 TICE.—

10 “(I) RETURNS.—In the event the  
11 corporation ceases to be treated as a  
12 REIT by operation of clause (ii), the  
13 corporation shall file any appropriate  
14 amended returns reflecting the change  
15 in status within 3 months of the close  
16 of the extended eligibility period.

17 “(II) INTEREST.—Interest shall  
18 be payable on any tax imposed by rea-  
19 son of clause (ii) for any taxable year  
20 but, unless there was a finding under  
21 subparagraph (D), no substantial un-  
22 derpayment penalties shall be im-  
23 posed.

24 “(III) NOTICE.—The corporation  
25 shall, at the same time it files its re-

1 turns under subclause (I), notify its  
2 shareholders and any other persons  
3 whose tax position is, or may reason-  
4 ably be expected to be, affected by the  
5 change in status so they also may file  
6 any appropriate amended returns to  
7 conform their tax treatment consistent  
8 with the corporation's loss of REIT  
9 status.

10 “(IV) REGULATIONS.—The Sec-  
11 retary shall provide appropriate regu-  
12 lations setting forth transferee liabil-  
13 ity and other provisions to ensure col-  
14 lection of tax and the proper adminis-  
15 tration of this provision.

16 “(iv) Clauses (ii) and (iii) shall not  
17 apply if the corporation allows its incu-  
18 bator REIT status to lapse at the end of  
19 the initial 2-year eligibility period without  
20 engaging in a going public transaction if  
21 the corporation is not a controlled entity as  
22 of the beginning of its fourth taxable year.  
23 In such a case, the corporation's directors  
24 may still be liable for the penalties de-

1           scribed in subparagraph (D) during the eli-  
2           gibility period.

3           “(D) SPECIAL PENALTIES.—If the Sec-  
4           retary determines that an incubator REIT elec-  
5           tion was filed for a principal purpose other than  
6           as part of a reasonable plan to undertake a  
7           going public transaction, an excise tax of  
8           \$20,000 shall be imposed on each of the cor-  
9           poration’s directors for each taxable year for  
10          which an election was in effect.

11          “(E) GOING PUBLIC TRANSACTION.—For  
12          purposes of this paragraph, a going public  
13          transaction means—

14               “(i) a public offering of shares of the  
15               stock of the incubator REIT;

16               “(ii) a transaction, or series of trans-  
17               actions, that results in the stock of the in-  
18               cubator REIT being regularly traded on an  
19               established securities market and that re-  
20               sults in at least 50 percent of such stock  
21               being held by shareholders who are unre-  
22               lated to persons who held such stock before  
23               it began to be so regularly traded; or

24               “(iii) any transaction resulting in  
25               ownership of the REIT by 200 or more

1 persons (excluding the largest single share-  
2 holder) who in the aggregate own at least  
3 50 percent of the stock of the REIT.

4 For the purposes of this subparagraph, the  
5 rules of paragraph (3) shall apply in deter-  
6 mining the ownership of stock.

7 “(F) DEFINITIONS.—The term ‘established  
8 securities market’ shall have the meaning set  
9 forth in the regulations under section 897.”.

10 (c) CONFORMING AMENDMENT.—Paragraph (2) of  
11 section 856(h) is amended by striking “and (6)” each  
12 place it appears and inserting “, (6), and (7)”.

13 (d) EFFECTIVE DATE.—

14 (1) IN GENERAL.—The amendments made by  
15 this section shall apply to taxable years ending after  
16 May 8, 2003.

17 (2) EXCEPTION FOR EXISTING CONTROLLED  
18 ENTITIES.—The amendments made by this section  
19 shall not apply to any entity which is a controlled  
20 entity (as defined in section 856(l) of the Internal  
21 Revenue Code of 1986, as added by this section) as  
22 of May 8, 2003, which is a real estate investment  
23 trust for the taxable year which includes such date,  
24 and which has significant business assets or activi-  
25 ties as of such date. For purposes of the preceding

1 sentence, an entity shall be treated as such a con-  
2 trolled entity on May 8, 2003, if it becomes such an  
3 entity after such date in a transaction—

4 (A) made pursuant to a written agreement  
5 which was binding on such date and at all times  
6 thereafter, or

7 (B) described on or before such date in a  
8 filing with the Securities and Exchange Com-  
9 mission required solely by reason of the trans-  
10 action.

## 11 **Subtitle C—Other Corporate** 12 **Governance Provisions**

### 13 **PART I—GENERAL PROVISIONS**

#### 14 **SEC. 331. AFFIRMATION OF CONSOLIDATED RETURN REGU-** 15 **LATION AUTHORITY.**

16 (a) IN GENERAL.—Section 1502 (relating to consoli-  
17 dated return regulations) is amended by adding at the end  
18 the following new sentence: “In prescribing such regula-  
19 tions, the Secretary may prescribe rules applicable to cor-  
20 porations filing consolidated returns under section 1501  
21 that are different from other provisions of this title that  
22 would apply if such corporations filed separate returns.”.

23 (b) RESULT NOT OVERTURNED.—Notwithstanding  
24 subsection (a), the Internal Revenue Code of 1986 shall  
25 be construed by treating Treasury regulation § 1.1502–

1 20(c)(1)(iii) (as in effect on January 1, 2001) as being  
2 inapplicable to the type of factual situation in 255 F.3d  
3 1357 (Fed. Cir. 2001).

4 (c) EFFECTIVE DATE.—The provisions of this section  
5 shall apply to taxable years beginning before, on, or after  
6 the date of the enactment of this Act.

7 **SEC. 332. SIGNING OF CORPORATE TAX RETURNS BY CHIEF**  
8 **EXECUTIVE OFFICER.**

9 (a) IN GENERAL.—Section 6062 (relating to signing  
10 of corporation returns) is amended by striking the first  
11 sentence and inserting the following new sentence: “The  
12 return of a corporation with respect to income shall be  
13 signed by the chief executive officer of such corporation  
14 (or other such officer of the corporation as the Secretary  
15 may designate if the corporation does not have a chief ex-  
16 ecutive officer). The preceding sentence shall not apply to  
17 any return of a regulated investment company (within the  
18 meaning of section 851).”.

19 (b) EFFECTIVE DATE.—The amendment made by  
20 this section shall apply to returns filed after the date of  
21 the enactment of this Act.

1 **SEC. 333. DENIAL OF DEDUCTION FOR CERTAIN FINES,**  
2 **PENALTIES, AND OTHER AMOUNTS.**

3 (a) IN GENERAL.—Subsection (f) of section 162 (re-  
4 lating to trade or business expenses) is amended to read  
5 as follows:

6 “(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

7 “(1) IN GENERAL.—Except as provided in para-  
8 graph (2), no deduction otherwise allowable shall be  
9 allowed under this chapter for any amount paid or  
10 incurred (whether by suit, agreement, or otherwise)  
11 to, or at the direction of, a government or entity de-  
12 scribed in paragraph (3) in relation to the violation  
13 of any law or the investigation or inquiry into the  
14 potential violation of any law.

15 “(2) EXCEPTION FOR AMOUNTS CONSTITUTING  
16 RESTITUTION.—Paragraph (1) shall not apply to  
17 any amount which the taxpayer establishes con-  
18 stitutes restitution for damage or harm caused by  
19 the violation of any law or the potential violation of  
20 any law. This paragraph shall not apply to any  
21 amount paid or incurred as reimbursement to the  
22 government or entity for the costs of any investiga-  
23 tion or litigation.

24 “(3) CERTAIN NONGOVERNMENTAL REGU-  
25 LATORY ENTITIES.—An entity is described in this  
26 paragraph if it is—



1           “(A) a nongovernmental entity which exer-  
2           cises self-regulatory powers (including imposing  
3           sanctions) in connection with a qualified board  
4           or exchange (as defined in section 1256(g)(7)),  
5           or

6           “(B) to the extent provided in regulations,  
7           a nongovernmental entity which exercises self-  
8           regulatory powers (including imposing sanc-  
9           tions) as part of performing an essential gov-  
10          ernmental function.”.

11       (b) **EFFECTIVE DATE.**—The amendment made by  
12 this section shall apply to amounts paid or incurred after  
13 April 27, 2003, except that such amendment shall not  
14 apply to amounts paid or incurred under any binding  
15 order or agreement entered into on or before April 27,  
16 2003. Such exception shall not apply to an order or agree-  
17 ment requiring court approval unless the approval was ob-  
18 tained on or before April 27, 2003.

19 **SEC. 334. DISALLOWANCE OF DEDUCTION FOR PUNITIVE**  
20 **DAMAGES.**

21       (a) **DISALLOWANCE OF DEDUCTION.**—

22           (1) **IN GENERAL.**—Section 162(g) (relating to  
23       treble damage payments under the antitrust laws) is  
24       amended by adding at the end the following new  
25       paragraph:

1           “(2) PUNITIVE DAMAGES.—No deduction shall  
2           be allowed under this chapter for any amount paid  
3           or incurred for punitive damages in connection with  
4           any judgment in, or settlement of, any action. This  
5           paragraph shall not apply to punitive damages de-  
6           scribed in section 104(c).”.

7           (2) CONFORMING AMENDMENTS.—

8           (A) Section 162(g) is amended—

9           (i) by striking “If” and inserting:

10          “(1) TREBLE DAMAGES.—If”, and

11                   (ii) by redesignating paragraphs (1)  
12                   and (2) as subparagraphs (A) and (B), re-  
13                   spectively.

14           (B) The heading for section 162(g) is  
15           amended by inserting “OR PUNITIVE DAM-  
16           AGES” after “LAWS”.

17          (b) INCLUSION IN INCOME OF PUNITIVE DAMAGES  
18          PAID BY INSURER OR OTHERWISE.—

19           (1) IN GENERAL.—Part II of subchapter B of  
20          chapter 1 (relating to items specifically included in  
21          gross income) is amended by adding at the end the  
22          following new section:

1 **“SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSUR-**  
2 **ANCE OR OTHERWISE.**

3 “Gross income shall include any amount paid to or  
4 on behalf of a taxpayer as insurance or otherwise by rea-  
5 son of the taxpayer’s liability (or agreement) to pay puni-  
6 tive damages.”.

7 (2) REPORTING REQUIREMENTS.—Section 6041  
8 (relating to information at source) is amended by  
9 adding at the end the following new subsection:

10 “(f) SECTION TO APPLY TO PUNITIVE DAMAGES  
11 COMPENSATION.—This section shall apply to payments by  
12 a person to or on behalf of another person as insurance  
13 or otherwise by reason of the other person’s liability (or  
14 agreement) to pay punitive damages.”.

15 (3) CONFORMING AMENDMENT.—The table of  
16 sections for part II of subchapter B of chapter 1 is  
17 amended by adding at the end the following new  
18 item:

“Sec. 91. Punitive damages compensated by insurance or otherwise.”.

19 (c) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to damages paid or incurred on  
21 or after the date of the enactment of this Act.

1   **PART II—EXECUTIVE COMPENSATION REFORM**

2   **SEC. 335. TREATMENT OF NONQUALIFIED DEFERRED COM-**  
3                   **PENSATION FUNDED WITH ASSETS LOCATED**  
4                   **OUTSIDE THE UNITED STATES.**

5       (a) IN GENERAL.—Section 83(c) (relating to special  
6 rules for property transferred in connection with perform-  
7 ance of services) is amended by adding at the end the fol-  
8 lowing new paragraph:

9               “(4) FOREIGN ASSETS FUNDING NONQUALIFIED  
10       DEFERRED COMPENSATION ARRANGEMENTS.—

11               “(A) IN GENERAL.—In determining wheth-  
12       er there is a transfer of property for purposes  
13       of subsection (a), if assets are—

14                       “(i) designated or otherwise available  
15                       for the payment of nonqualified deferred  
16                       compensation, and

17                       “(ii) located outside the United  
18       States,

19       such assets shall not be treated as subject to  
20       the claims of creditors.

21               “(B) COMPENSATION FOR SERVICES PER-  
22       FORMED IN FOREIGN JURISDICTION.—Subpara-  
23       graph (A) shall not apply to assets located in  
24       a foreign jurisdiction if substantially all of the  
25       services to which the nonqualified deferred com-

1           pensation relates are performed in such juris-  
2           diction.

3           “(C) REGULATIONS.—The Secretary shall  
4           prescribe such regulations as are necessary to  
5           carry out the provisions of this paragraph, in-  
6           cluding regulations to exempt arrangements  
7           from the application of this paragraph if—

8                   “(i) the arrangement will not result in  
9                   an improper deferral of United States tax,  
10                  and

11                   “(ii) the assets involved in the ar-  
12                   rangement will be readily accessible in any  
13                   insolvency or bankruptcy proceeding.”.

14       (b) EFFECTIVE DATE.—The amendments made by  
15       this section shall apply to amounts deferred in taxable  
16       years beginning after December 31, 2003.

17       **SEC. 336. INCLUSION IN GROSS INCOME OF FUNDED DE-**  
18                   **FERRED COMPENSATION OF CORPORATE IN-**  
19                   **SIDERS.**

20       (a) IN GENERAL.—Subpart A of part I of subchapter  
21       D of chapter 1 is amended by adding at the end the fol-  
22       lowing new section:

1 **“SEC. 409A. INCLUSION IN GROSS INCOME OF FUNDED DE-**  
2 **FERRED COMPENSATION OF CORPORATE IN-**  
3 **SIDERS.**

4 “(a) IN GENERAL.—If an employer maintains a fund-  
5 ed deferred compensation plan—

6 “(1) compensation of any disqualified individual  
7 which is deferred under such funded deferred com-  
8 pensation plan shall be included in the gross income  
9 of the disqualified individual or beneficiary for the  
10 1st taxable year in which there is no substantial risk  
11 of forfeiture of the rights to such compensation, and

12 “(2) the tax treatment of any amount made  
13 available under the plan to a disqualified individual  
14 or beneficiary shall be determined under section 72  
15 (relating to annuities, etc.).

16 “(b) FUNDED DEFERRED COMPENSATION PLAN.—  
17 For purposes of this section—

18 “(1) IN GENERAL.—The term ‘funded deferred  
19 compensation plan’ means any plan providing for the  
20 deferral of compensation unless—

21 “(A) the employee’s rights to the com-  
22 pensation deferred under the plan are no great-  
23 er than the rights of a general creditor of the  
24 employer, and

25 “(B) all amounts set aside (directly or in-  
26 directly) for purposes of paying the deferred

1 compensation, and all income attributable to  
2 such amounts, remain (until made available to  
3 the participant or other beneficiary) solely the  
4 property of the employer (without being re-  
5 stricted to the provision of benefits under the  
6 plan),

7 “(C) the amounts referred to in subpara-  
8 graph (B) are available to satisfy the claims of  
9 the employer’s general creditors at all times  
10 (not merely after bankruptcy or insolvency),  
11 and

12 “(D) the investment options which a par-  
13 ticipant may elect under the plan are the same  
14 as the investment options which a participant  
15 may elect under the qualified employer plan of  
16 the employer which has the fewest investment  
17 options.

18 Such term shall not include a qualified employer  
19 plan.

20 “(2) SPECIAL RULES.—

21 “(A) EMPLOYEE’S RIGHTS.—A plan shall  
22 be treated as failing to meet the requirements  
23 of paragraph (1)(A) unless—

24 “(i) the compensation deferred under  
25 the plan is payable only upon separation

1 from service, death, disability (within the  
2 meaning of section 1614(a)(3) of the So-  
3 cial Security Act (42 U.S.C. 1382c(a)(3))),  
4 or at a specified time (or pursuant to a  
5 fixed schedule), and

6 “(ii) the plan does not permit the ac-  
7 celeration of the time such deferred com-  
8 pensation is payable by reason of any  
9 event.

10 If the employer and employee agree to a modi-  
11 fication of the plan that accelerates the time for  
12 payment of any deferred compensation, then all  
13 compensation previously deferred under the  
14 plan shall be includible in gross income for the  
15 taxable year during which such modification  
16 takes effect and the taxpayer shall pay interest  
17 at the underpayment rate on the underpay-  
18 ments that would have occurred had the de-  
19 ferred compensation been includible in gross in-  
20 come on the earliest date that there is no sub-  
21 stantial risk of forfeiture of the rights to such  
22 compensation.

23 “(B) CREDITOR’S RIGHTS.—A plan shall  
24 be treated as failing to meet the requirements



1 of paragraph (1)(B) with respect to amounts  
2 set aside in a trust unless—

3 “(i) the employee has no beneficial in-  
4 terest in the trust,

5 “(ii) assets in the trust are available  
6 to satisfy claims of general creditors at all  
7 times (not merely after bankruptcy or in-  
8 solvency), and

9 “(iii) there is no factor that would  
10 make it more difficult for general creditors  
11 to reach the assets in the trust than it  
12 would be if the trust assets were held di-  
13 rectly by the employer in the United  
14 States.

15 Except as provided in regulations prescribed by  
16 the Secretary, such a factor shall include the lo-  
17 cation of the trust outside the United States  
18 unless substantially all of the services to which  
19 the nonqualified deferred compensation relates  
20 are performed outside the United States. Such  
21 regulations may exempt any such trust if the  
22 trust will not result in an improper deferral of  
23 United States tax, and the assets involved in  
24 the trust will be readily accessible in any insol-  
25 vency or bankruptcy proceeding.

1       “(c) DISQUALIFIED INDIVIDUAL.—For purposes of  
2 this section, the term ‘disqualified individual’ means, with  
3 respect to a corporation, any individual—

4               “(1) who is subject to the requirements of sec-  
5 tion 16(a) of the Securities Exchange Act of 1934  
6 with respect to such corporation, or

7               “(2) who would be subject to such requirements  
8 if such corporation were an issuer of equity securi-  
9 ties referred to in such section.

10       “(d) OTHER DEFINITIONS AND SPECIAL RULES.—  
11 For purposes of this section—

12               “(1) QUALIFIED EMPLOYER PLAN.—The term  
13 ‘qualified employer plan’ means—

14                       “(A) any plan, contract, pension, account,  
15 or trust described in subparagraph (A) or (B)  
16 of section 219(g)(5), and

17                       “(B) any other plan of an organization ex-  
18 empt from tax under subtitle A.

19               “(2) PLAN INCLUDES ARRANGEMENTS, ETC.—  
20 The term ‘plan’ includes any agreement or arrange-  
21 ment.

22               “(3) SUBSTANTIAL RISK OF FORFEITURE.—The  
23 rights of a person to compensation are subject to a  
24 substantial risk of forfeiture if such person’s rights  
25 to such compensation are conditioned upon the fu-

1       ture performance of substantial services by any indi-  
2       vidual.

3               “(4) TREATMENT OF EARNINGS.—References to  
4       deferred compensation shall be treated as including  
5       references to income attributable to such compensa-  
6       tion or such income.”.

7       (b) CLERICAL AMENDMENT.—The table of sections  
8       for such subpart A is amended by adding at the end the  
9       following new item:

                  “Sec. 409A. Inclusion in gross income of funded deferred com-  
                  pensation of corporate insiders.”.

10       (c) EFFECTIVE DATE.—The amendments made by  
11       this section shall apply to amounts deferred in taxable  
12       years beginning after December 31, 2003.

13       **SEC. 337. PROHIBITION ON DEFERRAL OF GAIN FROM THE**  
14                       **EXERCISE OF STOCK OPTIONS AND RE-**  
15                       **STRICTED STOCK GAINS THROUGH DE-**  
16                       **FERRED COMPENSATION ARRANGEMENTS.**

17       (a) IN GENERAL.—Section 83 (relating to property  
18       transferred in connection with performance of services) is  
19       amending by adding at the end the following new sub-  
20       section:

21               “(i) PROHIBITION ON ADDITIONAL DEFERRAL  
22       THROUGH DEFERRED COMPENSATION ARRANGE-  
23       MENTS.—If a taxpayer elects to exchange an option to  
24       purchase employer securities—

1 “(1) to which subsection (a) applies, or  
2 “(2) which is described in subsection (e)(3),  
3 or any other compensation based on employer securities,  
4 for a right to receive future payments, then, notwith-  
5 standing any other provision of this title, there shall be  
6 included in gross income for the taxable year of the ex-  
7 change an amount equal to the present value of such right  
8 (or such other amount as the Secretary may by regulations  
9 specify). For purposes of this subsection, the term ‘em-  
10 ployer securities’ has the meaning given such term by sec-  
11 tion 409(l).”.

12 (b) EFFECTIVE DATE.—The amendment made by  
13 this section shall apply to any exchange after December  
14 31, 2003.

15 **SEC. 338. INCREASE IN WITHHOLDING FROM SUPPLE-**  
16 **MENTAL WAGE PAYMENTS IN EXCESS OF**  
17 **\$1,000,000.**

18 (a) IN GENERAL.—If an employer elects under  
19 Treasury Regulation 31.3402(g)–1 to determine the  
20 amount to be deducted and withheld from any supple-  
21 mental wage payment by using a flat percentage rate, the  
22 rate to be used in determining the amount to be so de-  
23 ducted and withheld shall not be less than 28 percent (or  
24 the corresponding rate in effect under section 1(i)(2) of  
25 the Internal Revenue Code of 1986 for taxable years be-

1   ginning in the calendar year in which the payment is  
2   made).

3       (b) SPECIAL RULE FOR LARGE PAYMENTS.—

4           (1) IN GENERAL.—Notwithstanding subsection  
5       (a), if the supplemental wage payment, when added  
6       to all such payments previously made by the em-  
7       ployer to the employee during the calendar year, ex-  
8       ceeds \$1,000,000, the rate used with respect to such  
9       excess shall be equal to the maximum rate of tax in  
10      effect under section 1 of such Code for taxable years  
11      beginning in such calendar year.

12          (2) AGGREGATION.—All persons treated as a  
13      single employer under subsection (a) or (b) of sec-  
14      tion 52 of the Internal Revenue Code of 1986 shall  
15      be treated as a single employer for purposes of this  
16      subsection.

17      (c) CONFORMING AMENDMENT.—Section 13273 of  
18      the Revenue Reconciliation Act of 1993 (Public Law 103–  
19      66) is repealed.

20      (d) EFFECTIVE DATE.—The provisions of, and the  
21      amendment made by, this section shall apply to payments  
22      made after December 31, 2003.

**Subtitle D—International  
Provisions**

**PART I—PROVISIONS TO DISCOURAGE  
EXPATRIATION**

**SEC. 340. REVISION OF TAX RULES ON EXPATRIATION.**

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

**“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

“(a) GENERAL RULES.—For purposes of this subtitle—

“(1) MARK TO MARKET.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

“(2) RECOGNITION OF GAIN OR LOSS.—In the case of any sale under paragraph (1)—

“(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

“(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this

1 title, except that section 1091 shall not apply to  
2 any such loss.

3 Proper adjustment shall be made in the amount of  
4 any gain or loss subsequently realized for gain or  
5 loss taken into account under the preceding sen-  
6 tence.

7 “(3) EXCLUSION FOR CERTAIN GAIN.—

8 “(A) IN GENERAL.—The amount which,  
9 but for this paragraph, would be includible in  
10 the gross income of any individual by reason of  
11 this section shall be reduced (but not below  
12 zero) by \$600,000. For purposes of this para-  
13 graph, allocable expatriation gain taken into ac-  
14 count under subsection (f)(2) shall be treated in  
15 the same manner as an amount required to be  
16 includible in gross income.

17 “(B) COST-OF-LIVING ADJUSTMENT.—

18 “(i) IN GENERAL.—In the case of an  
19 expatriation date occurring in any calendar  
20 year after 2003, the \$600,000 amount  
21 under subparagraph (A) shall be increased  
22 by an amount equal to—

23 “(I) such dollar amount, multi-  
24 plied by

1                   “(II) the cost-of-living adjust-  
2                   ment determined under section 1(f)(3)  
3                   for such calendar year, determined by  
4                   substituting ‘calendar year 2002’ for  
5                   ‘calendar year 1992’ in subparagraph  
6                   (B) thereof.

7                   “(ii) ROUNDING RULES.—If any  
8                   amount after adjustment under clause (i)  
9                   is not a multiple of \$1,000, such amount  
10                  shall be rounded to the next lower multiple  
11                  of \$1,000.

12                  “(4) ELECTION TO CONTINUE TO BE TAXED AS  
13                  UNITED STATES CITIZEN.—

14                  “(A) IN GENERAL.—If a covered expatriate  
15                  elects the application of this paragraph—

16                       “(i) this section (other than this para-  
17                       graph and subsection (i)) shall not apply to  
18                       the expatriate, but

19                       “(ii) in the case of property to which  
20                       this section would apply but for such elec-  
21                       tion, the expatriate shall be subject to tax  
22                       under this title in the same manner as if  
23                       the individual were a United States citizen.



1 “(B) REQUIREMENTS.—Subparagraph (A)  
2 shall not apply to an individual unless the  
3 individual—

4 “(i) provides security for payment of  
5 tax in such form and manner, and in such  
6 amount, as the Secretary may require,

7 “(ii) consents to the waiver of any  
8 right of the individual under any treaty of  
9 the United States which would preclude as-  
10 sessment or collection of any tax which  
11 may be imposed by reason of this para-  
12 graph, and

13 “(iii) complies with such other re-  
14 quirements as the Secretary may prescribe.

15 “(C) ELECTION.—An election under sub-  
16 paragraph (A) shall apply to all property to  
17 which this section would apply but for the elec-  
18 tion and, once made, shall be irrevocable. Such  
19 election shall also apply to property the basis of  
20 which is determined in whole or in part by ref-  
21 erence to the property with respect to which the  
22 election was made.

23 “(b) ELECTION TO DEFER TAX.—

24 “(1) IN GENERAL.—If the taxpayer elects the  
25 application of this subsection with respect to any

1 property treated as sold by reason of subsection (a),  
2 the payment of the additional tax attributable to  
3 such property shall be postponed until the due date  
4 of the return for the taxable year in which such  
5 property is disposed of (or, in the case of property  
6 disposed of in a transaction in which gain is not rec-  
7 ognized in whole or in part, until such other date as  
8 the Secretary may prescribe).

9 “(2) DETERMINATION OF TAX WITH RESPECT  
10 TO PROPERTY.—For purposes of paragraph (1), the  
11 additional tax attributable to any property is an  
12 amount which bears the same ratio to the additional  
13 tax imposed by this chapter for the taxable year  
14 solely by reason of subsection (a) as the gain taken  
15 into account under subsection (a) with respect to  
16 such property bears to the total gain taken into ac-  
17 count under subsection (a) with respect to all prop-  
18 erty to which subsection (a) applies.

19 “(3) TERMINATION OF POSTPONEMENT.—No  
20 tax may be postponed under this subsection later  
21 than the due date for the return of tax imposed by  
22 this chapter for the taxable year which includes the  
23 date of death of the expatriate (or, if earlier, the  
24 time that the security provided with respect to the  
25 property fails to meet the requirements of paragraph

1 (4), unless the taxpayer corrects such failure within  
2 the time specified by the Secretary).

3 “(4) SECURITY.—

4 “(A) IN GENERAL.—No election may be  
5 made under paragraph (1) with respect to any  
6 property unless adequate security is provided to  
7 the Secretary with respect to such property.

8 “(B) ADEQUATE SECURITY.—For purposes  
9 of subparagraph (A), security with respect to  
10 any property shall be treated as adequate secu-  
11 rity if—

12 “(i) it is a bond in an amount equal  
13 to the deferred tax amount under para-  
14 graph (2) for the property, or

15 “(ii) the taxpayer otherwise estab-  
16 lishes to the satisfaction of the Secretary  
17 that the security is adequate.

18 “(5) WAIVER OF CERTAIN RIGHTS.—No elec-  
19 tion may be made under paragraph (1) unless the  
20 taxpayer consents to the waiver of any right under  
21 any treaty of the United States which would pre-  
22 clude assessment or collection of any tax imposed by  
23 reason of this section.

24 “(6) ELECTIONS.—An election under paragraph  
25 (1) shall only apply to property described in the elec-

1       tion and, once made, is irrevocable. An election may  
2       be made under paragraph (1) with respect to an in-  
3       terest in a trust with respect to which gain is re-  
4       quired to be recognized under subsection (f)(1).

5           “(7) INTEREST.—For purposes of section  
6       6601—

7           “(A) the last date for the payment of tax  
8       shall be determined without regard to the elec-  
9       tion under this subsection, and

10          “(B) section 6621(a)(2) shall be applied by  
11       substituting ‘5 percentage points’ for ‘3 per-  
12       centage points’ in subparagraph (B) thereof.

13          “(c) COVERED EXPATRIATE.—For purposes of this  
14       section—

15          “(1) IN GENERAL.—Except as provided in para-  
16       graph (2), the term ‘covered expatriate’ means an  
17       expatriate.

18          “(2) EXCEPTIONS.—An individual shall not be  
19       treated as a covered expatriate if—

20          “(A) the individual—

21               “(i) became at birth a citizen of the  
22               United States and a citizen of another  
23               country and, as of the expatriation date,  
24               continues to be a citizen of, and is taxed  
25               as a resident of, such other country, and

1                   “(ii) has not been a resident of the  
2                   United States (as defined in section  
3                   7701(b)(1)(A)(ii)) during the 5 taxable  
4                   years ending with the taxable year during  
5                   which the expatriation date occurs, or

6                   “(B)(i) the individual’s relinquishment of  
7                   United States citizenship occurs before such in-  
8                   dividual attains age 18½, and

9                   “(ii) the individual has been a resident of  
10                  the United States (as so defined) for not more  
11                  than 5 taxable years before the date of relin-  
12                  quishment.

13               “(d) EXEMPT PROPERTY; SPECIAL RULES FOR PEN-  
14               SION PLANS.—

15               “(1) EXEMPT PROPERTY.—This section shall  
16               not apply to the following:

17               “(A) UNITED STATES REAL PROPERTY IN-  
18               TERESTS.—Any United States real property in-  
19               terest (as defined in section 897(c)(1)), other  
20               than stock of a United States real property  
21               holding corporation which does not, on the day  
22               before the expatriation date, meet the require-  
23               ments of section 897(c)(2).

24               “(B) SPECIFIED PROPERTY.—Any prop-  
25               erty or interest in property not described in

1           subparagraph (A) which the Secretary specifies  
2           in regulations.

3           “(2) SPECIAL RULES FOR CERTAIN RETIRE-  
4           MENT PLANS.—

5                   “(A) IN GENERAL.—If a covered expatriate  
6           holds on the day before the expatriation date  
7           any interest in a retirement plan to which this  
8           paragraph applies—

9                           “(i) such interest shall not be treated  
10           as sold for purposes of subsection (a)(1),  
11           but

12                           “(ii) an amount equal to the present  
13           value of the expatriate’s nonforfeitable ac-  
14           crued benefit shall be treated as having  
15           been received by such individual on such  
16           date as a distribution under the plan.

17                   “(B) TREATMENT OF SUBSEQUENT DIS-  
18           TRIBUTIONS.—In the case of any distribution  
19           on or after the expatriation date to or on behalf  
20           of the covered expatriate from a plan from  
21           which the expatriate was treated as receiving a  
22           distribution under subparagraph (A), the  
23           amount otherwise includible in gross income by  
24           reason of the subsequent distribution shall be  
25           reduced by the excess of the amount includible

1 in gross income under subparagraph (A) over  
2 any portion of such amount to which this sub-  
3 paragraph previously applied.

4 “(C) TREATMENT OF SUBSEQUENT DIS-  
5 TRIBUTIONS BY PLAN.—For purposes of this  
6 title, a retirement plan to which this paragraph  
7 applies, and any person acting on the plan’s be-  
8 half, shall treat any subsequent distribution de-  
9 scribed in subparagraph (B) in the same man-  
10 ner as such distribution would be treated with-  
11 out regard to this paragraph.

12 “(D) APPLICABLE PLANS.—This para-  
13 graph shall apply to—

14 “(i) any qualified retirement plan (as  
15 defined in section 4974(c)),

16 “(ii) an eligible deferred compensation  
17 plan (as defined in section 457(b)) of an  
18 eligible employer described in section  
19 457(e)(1)(A), and

20 “(iii) to the extent provided in regula-  
21 tions, any foreign pension plan or similar  
22 retirement arrangements or programs.

23 “(e) DEFINITIONS.—For purposes of this section—

24 “(1) EXPATRIATE.—The term ‘expatriate’  
25 means—

1           “(A) any United States citizen who relin-  
2           quishes citizenship, and

3           “(B) any long-term resident of the United  
4           States who—

5                   “(i) ceases to be a lawful permanent  
6                   resident of the United States (within the  
7                   meaning of section 7701(b)(6)), or

8                   “(ii) commences to be treated as a  
9                   resident of a foreign country under the  
10                  provisions of a tax treaty between the  
11                  United States and the foreign country and  
12                  who does not waive the benefits of such  
13                  treaty applicable to residents of the foreign  
14                  country.

15           “(2) EXPATRIATION DATE.—The term ‘expa-  
16           triation date’ means—

17                   “(A) the date an individual relinquishes  
18                   United States citizenship, or

19                   “(B) in the case of a long-term resident of  
20                   the United States, the date of the event de-  
21                   scribed in clause (i) or (ii) of paragraph (1)(B).

22           “(3) RELINQUISHMENT OF CITIZENSHIP.—A  
23           citizen shall be treated as relinquishing United  
24           States citizenship on the earliest of—



1           “(A) the date the individual renounces  
2           such individual’s United States nationality be-  
3           fore a diplomatic or consular officer of the  
4           United States pursuant to paragraph (5) of sec-  
5           tion 349(a) of the Immigration and Nationality  
6           Act (8 U.S.C. 1481(a)(5)),

7           “(B) the date the individual furnishes to  
8           the United States Department of State a signed  
9           statement of voluntary relinquishment of  
10          United States nationality confirming the per-  
11          formance of an act of expatriation specified in  
12          paragraph (1), (2), (3), or (4) of section 349(a)  
13          of the Immigration and Nationality Act (8  
14          U.S.C. 1481(a)(1)–(4)),

15          “(C) the date the United States Depart-  
16          ment of State issues to the individual a certifi-  
17          cate of loss of nationality, or

18          “(D) the date a court of the United States  
19          cancels a naturalized citizen’s certificate of nat-  
20          uralization.

21          Subparagraph (A) or (B) shall not apply to any indi-  
22          vidual unless the renunciation or voluntary relin-  
23          quishment is subsequently approved by the issuance  
24          to the individual of a certificate of loss of nationality  
25          by the United States Department of State.

1           “(4) LONG-TERM RESIDENT.—The term ‘long-  
2       term resident’ has the meaning given to such term  
3       by section 877(e)(2).

4           “(f) SPECIAL RULES APPLICABLE TO BENE-  
5       FICIARIES’ INTERESTS IN TRUST.—

6           “(1) IN GENERAL.—Except as provided in para-  
7       graph (2), if an individual is determined under para-  
8       graph (3) to hold an interest in a trust on the day  
9       before the expatriation date—

10           “(A) the individual shall not be treated as  
11       having sold such interest,

12           “(B) such interest shall be treated as a  
13       separate share in the trust, and

14           “(C)(i) such separate share shall be treat-  
15       ed as a separate trust consisting of the assets  
16       allocable to such share,

17           “(ii) the separate trust shall be treated as  
18       having sold its assets on the day before the ex-  
19       patriation date for their fair market value and  
20       as having distributed all of its assets to the in-  
21       dividual as of such time, and

22           “(iii) the individual shall be treated as hav-  
23       ing recontributed the assets to the separate  
24       trust.

1 Subsection (a)(2) shall apply to any income, gain, or  
2 loss of the individual arising from a distribution de-  
3 scribed in subparagraph (C)(ii). In determining the  
4 amount of such distribution, proper adjustments  
5 shall be made for liabilities of the trust allocable to  
6 an individual's share in the trust.

7 “(2) SPECIAL RULES FOR INTERESTS IN QUALI-  
8 FIED TRUSTS.—

9 “(A) IN GENERAL.—If the trust interest  
10 described in paragraph (1) is an interest in a  
11 qualified trust—

12 “(i) paragraph (1) and subsection (a)  
13 shall not apply, and

14 “(ii) in addition to any other tax im-  
15 posed by this title, there is hereby imposed  
16 on each distribution with respect to such  
17 interest a tax in the amount determined  
18 under subparagraph (B).

19 “(B) AMOUNT OF TAX.—The amount of  
20 tax under subparagraph (A)(ii) shall be equal to  
21 the lesser of—

22 “(i) the highest rate of tax imposed by  
23 section 1(e) for the taxable year which in-  
24 cludes the day before the expatriation date,

1 multiplied by the amount of the distribu-  
2 tion, or

3 “(ii) the balance in the deferred tax  
4 account immediately before the distribution  
5 determined without regard to any increases  
6 under subparagraph (C)(ii) after the 30th  
7 day preceding the distribution.

8 “(C) DEFERRED TAX ACCOUNT.—For pur-  
9 poses of subparagraph (B)(ii)—

10 “(i) OPENING BALANCE.—The open-  
11 ing balance in a deferred tax account with  
12 respect to any trust interest is an amount  
13 equal to the tax which would have been im-  
14 posed on the allocable expatriation gain  
15 with respect to the trust interest if such  
16 gain had been included in gross income  
17 under subsection (a).

18 “(ii) INCREASE FOR INTEREST.—The  
19 balance in the deferred tax account shall  
20 be increased by the amount of interest de-  
21 termined (on the balance in the account at  
22 the time the interest accrues), for periods  
23 after the 90th day after the expatriation  
24 date, by using the rates and method appli-  
25 cable under section 6621 for underpay-

1           ments of tax for such periods, except that  
2           section 6621(a)(2) shall be applied by sub-  
3           stituting ‘5 percentage points’ for ‘3 per-  
4           centage points’ in subparagraph (B) there-  
5           of.

6           “(iii) DECREASE FOR TAXES PRE-  
7           VIOUSLY PAID.—The balance in the tax de-  
8           ferred account shall be reduced—

9                   “(I) by the amount of taxes im-  
10                  posed by subparagraph (A) on any  
11                  distribution to the person holding the  
12                  trust interest, and

13                   “(II) in the case of a person  
14                  holding a nonvested interest, to the  
15                  extent provided in regulations, by the  
16                  amount of taxes imposed by subpara-  
17                  graph (A) on distributions from the  
18                  trust with respect to nonvested inter-  
19                  ests not held by such person.

20           “(D) ALLOCABLE EXPATRIATION GAIN.—

21           For purposes of this paragraph, the allocable  
22           expatriation gain with respect to any bene-  
23           ficiary’s interest in a trust is the amount of  
24           gain which would be allocable to such bene-  
25           ficiary’s vested and nonvested interests in the

1 trust if the beneficiary held directly all assets  
2 allocable to such interests.

3 “(E) TAX DEDUCTED AND WITHHELD.—

4 “(i) IN GENERAL.—The tax imposed  
5 by subparagraph (A)(ii) shall be deducted  
6 and withheld by the trustees from the dis-  
7 tribution to which it relates.

8 “(ii) EXCEPTION WHERE FAILURE TO  
9 WAIVE TREATY RIGHTS.—If an amount  
10 may not be deducted and withheld under  
11 clause (i) by reason of the distributee fail-  
12 ing to waive any treaty right with respect  
13 to such distribution—

14 “(I) the tax imposed by subpara-  
15 graph (A)(ii) shall be imposed on the  
16 trust and each trustee shall be person-  
17 ally liable for the amount of such tax,  
18 and

19 “(II) any other beneficiary of the  
20 trust shall be entitled to recover from  
21 the distributee the amount of such tax  
22 imposed on the other beneficiary.

23 “(F) DISPOSITION.—If a trust ceases to be  
24 a qualified trust at any time, a covered expa-  
25 triate disposes of an interest in a qualified

1 trust, or a covered expatriate holding an inter-  
2 est in a qualified trust dies, then, in lieu of the  
3 tax imposed by subparagraph (A)(ii), there is  
4 hereby imposed a tax equal to the lesser of—

5 “(i) the tax determined under para-  
6 graph (1) as if the day before the expatria-  
7 tion date were the date of such cessation,  
8 disposition, or death, whichever is applica-  
9 ble, or

10 “(ii) the balance in the tax deferred  
11 account immediately before such date.

12 Such tax shall be imposed on the trust and  
13 each trustee shall be personally liable for the  
14 amount of such tax and any other beneficiary  
15 of the trust shall be entitled to recover from the  
16 covered expatriate or the estate the amount of  
17 such tax imposed on the other beneficiary.

18 “(G) DEFINITIONS AND SPECIAL RULES.—

19 For purposes of this paragraph—

20 “(i) QUALIFIED TRUST.—The term  
21 ‘qualified trust’ means a trust which is de-  
22 scribed in section 7701(a)(30)(E).

23 “(ii) VESTED INTEREST.—The term  
24 ‘vested interest’ means any interest which,

1 as of the day before the expatriation date,  
2 is vested in the beneficiary.

3 “(iii) NONVESTED INTEREST.—The  
4 term ‘nonvested interest’ means, with re-  
5 spect to any beneficiary, any interest in a  
6 trust which is not a vested interest. Such  
7 interest shall be determined by assuming  
8 the maximum exercise of discretion in  
9 favor of the beneficiary and the occurrence  
10 of all contingencies in favor of the bene-  
11 ficiary.

12 “(iv) ADJUSTMENTS.—The Secretary  
13 may provide for such adjustments to the  
14 bases of assets in a trust or a deferred tax  
15 account, and the timing of such adjust-  
16 ments, in order to ensure that gain is  
17 taxed only once.

18 “(v) COORDINATION WITH RETIRE-  
19 MENT PLAN RULES.—This subsection shall  
20 not apply to an interest in a trust which  
21 is part of a retirement plan to which sub-  
22 section (d)(2) applies.

23 “(3) DETERMINATION OF BENEFICIARIES’ IN-  
24 TEREST IN TRUST.—



1           “(A) DETERMINATIONS UNDER PARA-  
2           GRAPH (1).—For purposes of paragraph (1), a  
3           beneficiary’s interest in a trust shall be based  
4           upon all relevant facts and circumstances, in-  
5           cluding the terms of the trust instrument and  
6           any letter of wishes or similar document, histor-  
7           ical patterns of trust distributions, and the ex-  
8           istence of and functions performed by a trust  
9           protector or any similar adviser.

10           “(B) OTHER DETERMINATIONS.—For pur-  
11           poses of this section—

12           “(i) CONSTRUCTIVE OWNERSHIP.—If  
13           a beneficiary of a trust is a corporation,  
14           partnership, trust, or estate, the share-  
15           holders, partners, or beneficiaries shall be  
16           deemed to be the trust beneficiaries for  
17           purposes of this section.

18           “(ii) TAXPAYER RETURN POSITION.—  
19           A taxpayer shall clearly indicate on its in-  
20           come tax return—

21           “(I) the methodology used to de-  
22           termine that taxpayer’s trust interest  
23           under this section, and

24           “(II) if the taxpayer knows (or  
25           has reason to know) that any other

1 beneficiary of such trust is using a  
2 different methodology to determine  
3 such beneficiary's trust interest under  
4 this section.

5 “(g) TERMINATION OF DEFERRALS, ETC.—In the  
6 case of any covered expatriate, notwithstanding any other  
7 provision of this title—

8 “(1) any period during which recognition of in-  
9 come or gain is deferred shall terminate on the day  
10 before the expatriation date, and

11 “(2) any extension of time for payment of tax  
12 shall cease to apply on the day before the expatria-  
13 tion date and the unpaid portion of such tax shall  
14 be due and payable at the time and in the manner  
15 prescribed by the Secretary.

16 “(h) IMPOSITION OF TENTATIVE TAX.—

17 “(1) IN GENERAL.—If an individual is required  
18 to include any amount in gross income under sub-  
19 section (a) for any taxable year, there is hereby im-  
20 posed, immediately before the expatriation date, a  
21 tax in an amount equal to the amount of tax which  
22 would be imposed if the taxable year were a short  
23 taxable year ending on the expatriation date.

1           “(2) DUE DATE.—The due date for any tax im-  
2       posed by paragraph (1) shall be the 90th day after  
3       the expatriation date.

4           “(3) TREATMENT OF TAX.—Any tax paid under  
5       paragraph (1) shall be treated as a payment of the  
6       tax imposed by this chapter for the taxable year to  
7       which subsection (a) applies.

8           “(4) DEFERRAL OF TAX.—The provisions of  
9       subsection (b) shall apply to the tax imposed by this  
10      subsection to the extent attributable to gain includ-  
11      ible in gross income by reason of this section.

12      “(i) SPECIAL LIENS FOR DEFERRED TAX  
13      AMOUNTS.—

14           “(1) IMPOSITION OF LIEN.—

15           “(A) IN GENERAL.—If a covered expatriate  
16      makes an election under subsection (a)(4) or  
17      (b) which results in the deferral of any tax im-  
18      posed by reason of subsection (a), the deferred  
19      amount (including any interest, additional  
20      amount, addition to tax, assessable penalty, and  
21      costs attributable to the deferred amount) shall  
22      be a lien in favor of the United States on all  
23      property of the expatriate located in the United  
24      States (without regard to whether this section  
25      applies to the property).

1           “(B) DEFERRED AMOUNT.—For purposes  
2           of this subsection, the deferred amount is the  
3           amount of the increase in the covered expatri-  
4           ate’s income tax which, but for the election  
5           under subsection (a)(4) or (b), would have oc-  
6           curred by reason of this section for the taxable  
7           year including the expatriation date.

8           “(2) PERIOD OF LIEN.—The lien imposed by  
9           this subsection shall arise on the expatriation date  
10          and continue until—

11           “(A) the liability for tax by reason of this  
12           section is satisfied or has become unenforceable  
13           by reason of lapse of time, or

14           “(B) it is established to the satisfaction of  
15           the Secretary that no further tax liability may  
16           arise by reason of this section.

17           “(3) CERTAIN RULES APPLY.—The rules set  
18           forth in paragraphs (1), (3), and (4) of section  
19           6324A(d) shall apply with respect to the lien im-  
20           posed by this subsection as if it were a lien imposed  
21           by section 6324A.

22           “(j) REGULATIONS.—The Secretary shall prescribe  
23           such regulations as may be necessary or appropriate to  
24           carry out the purposes of this section.”.

1 (b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS  
2 RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS  
3 FROM EXPATRIATES.—Section 102 (relating to gifts, etc.  
4 not included in gross income) is amended by adding at  
5 the end the following new subsection:

6 “(d) GIFTS AND INHERITANCES FROM COVERED EX-  
7 PATRIATES.—

8 “(1) IN GENERAL.—Subsection (a) shall not ex-  
9 clude from gross income the value of any property  
10 acquired by gift, bequest, devise, or inheritance from  
11 a covered expatriate after the expatriation date. For  
12 purposes of this subsection, any term used in this  
13 subsection which is also used in section 877A shall  
14 have the same meaning as when used in section  
15 877A.

16 “(2) EXCEPTIONS FOR TRANSFERS OTHERWISE  
17 SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1)  
18 shall not apply to any property if either—

19 “(A) the gift, bequest, devise, or inherit-  
20 ance is—

21 “(i) shown on a timely filed return of  
22 tax imposed by chapter 12 as a taxable gift  
23 by the covered expatriate, or

24 “(ii) included in the gross estate of  
25 the covered expatriate for purposes of

1 chapter 11 and shown on a timely filed re-  
2 turn of tax imposed by chapter 11 of the  
3 estate of the covered expatriate, or

4 “(B) no such return was timely filed but  
5 no such return would have been required to be  
6 filed even if the covered expatriate were a cit-  
7 izen or long-term resident of the United  
8 States.”.

9 (c) DEFINITION OF TERMINATION OF UNITED  
10 STATES CITIZENSHIP.—Section 7701(a) is amended by  
11 adding at the end the following new paragraph:

12 “(48) TERMINATION OF UNITED STATES CITI-  
13 ZENSHIP.—

14 “(A) IN GENERAL.—An individual shall  
15 not cease to be treated as a United States cit-  
16 izen before the date on which the individual’s  
17 citizenship is treated as relinquished under sec-  
18 tion 877A(e)(3).

19 “(B) DUAL CITIZENS.—Under regulations  
20 prescribed by the Secretary, subparagraph (A)  
21 shall not apply to an individual who became at  
22 birth a citizen of the United States and a cit-  
23 izen of another country.”.

24 (d) INELIGIBILITY FOR VISA OR ADMISSION TO  
25 UNITED STATES.—

1           (1) IN GENERAL.—Section 212(a)(10)(E) of the  
2       Immigration and Nationality Act (8 U.S.C.  
3       1182(a)(10)(E)) is amended to read as follows:

4           “(E) FORMER CITIZENS NOT IN COMPLI-  
5       ANCE WITH EXPATRIATION REVENUE PROVI-  
6       SIONS.—Any alien who is a former citizen of  
7       the United States who relinquishes United  
8       States citizenship (within the meaning of sec-  
9       tion 877A(e)(3) of the Internal Revenue Code  
10      of 1986) and who is not in compliance with sec-  
11      tion 877A of such Code (relating to expatria-  
12      tion).”.

13          (2) AVAILABILITY OF INFORMATION.—

14               (A) IN GENERAL.—Section 6103(l) (relat-  
15      ing to disclosure of returns and return informa-  
16      tion for purposes other than tax administration)  
17      is amended by adding at the end the following  
18      new paragraph:

19               “(19) DISCLOSURE TO DENY VISA OR ADMIS-  
20      SION TO CERTAIN EXPATRIATES.—Upon written re-  
21      quest of the Attorney General or the Attorney Gen-  
22      eral’s delegate, the Secretary shall disclose whether  
23      an individual is in compliance with section 877A  
24      (and if not in compliance, any items of noncompli-  
25      ance) to officers and employees of the Federal agen-

1       cy     responsible     for     administering     section  
2       212(a)(10)(E) of the Immigration and Nationality  
3       Act solely for the purpose of, and to the extent nec-  
4       essary     in,     administering     such     section  
5       212(a)(10)(E).”.

6               (B) SAFEGUARDS.—

7               (i) TECHNICAL AMENDMENTS.—Para-  
8       graph (4) of section 6103(p) of the Inter-  
9       nal Revenue Code of 1986, as amended by  
10      section 202(b)(2)(B) of the Trade Act of  
11      2002 (Public Law 107–210; 116 Stat.  
12      961), is amended by striking “or (17)”  
13      after “any other person described in sub-  
14      section (l)(16)” each place it appears and  
15      inserting “or (18)”.

16              (ii) CONFORMING AMENDMENTS.—  
17      Section 6103(p)(4) (relating to safe-  
18      guards), as amended by clause (i), is  
19      amended by striking “or (18)” after “any  
20      other person described in subsection  
21      (l)(16)” each place it appears and insert-  
22      ing “(18), or (19)”.

23              (3) EFFECTIVE DATES.—

24              (A) IN GENERAL.—Except as provided in  
25      subparagraph (B), the amendments made by



1           this subsection shall apply to individuals who  
2           relinquish United States citizenship on or after  
3           the date of the enactment of this Act.

4                   (B)    TECHNICAL    AMENDMENTS.—The  
5           amendments made by paragraph (2)(B)(i) shall  
6           take effect as if included in the amendments  
7           made by section 202(b)(2)(B) of the Trade Act  
8           of 2002 (Public Law 107–210; 116 Stat. 961).

9           (e) CONFORMING AMENDMENTS.—

10           (1) Section 877 is amended by adding at the  
11           end the following new subsection:

12           “(g) APPLICATION.—This section shall not apply to  
13   an expatriate (as defined in section 877A(e)) whose expa-  
14   triation date (as so defined) occurs on or after February  
15   5, 2003.”.

16           (2) Section 2107 is amended by adding at the  
17           end the following new subsection:

18           “(f) APPLICATION.—This section shall not apply to  
19   any expatriate subject to section 877A.”.

20           (3) Section 2501(a)(3) is amended by adding at  
21           the end the following new subparagraph:

22                   “(F) APPLICATION.—This paragraph shall  
23           not apply to any expatriate subject to section  
24           877A.”.

1           (4)(A) Paragraph (1) of section 6039G(d) is  
2           amended by inserting “or 877A” after “section  
3           877”.

4           (B) The second sentence of section 6039G(e) is  
5           amended by inserting “or who relinquishes United  
6           States citizenship (within the meaning of section  
7           877A(e)(3))” after “877(a)”.

8           (C) Section 6039G(f) is amended by inserting  
9           “or 877A(e)(2)(B)” after “877(e)(1)”.

10          (f) CLERICAL AMENDMENT.—The table of sections  
11          for subpart A of part II of subchapter N of chapter 1  
12          is amended by inserting after the item relating to section  
13          877 the following new item:

            “Sec. 877A. Tax responsibilities of expatriation.”.

14          (g) EFFECTIVE DATE.—

15               (1) IN GENERAL.—Except as provided in this  
16               subsection, the amendments made by this section  
17               shall apply to expatriates (within the meaning of  
18               section 877A(e) of the Internal Revenue Code of  
19               1986, as added by this section) whose expatriation  
20               date (as so defined) occurs on or after February 5,  
21               2003.

22               (2) GIFTS AND BEQUESTS.—Section 102(d) of  
23               the Internal Revenue Code of 1986 (as added by  
24               subsection (b)) shall apply to gifts and bequests re-  
25               ceived on or after February 5, 2003, from an indi-

1       vidual or the estate of an individual whose expatria-  
2       tion date (as so defined) occurs after such date.

3           (3) DUE DATE FOR TENTATIVE TAX.—The due  
4       date under section 877A(h)(2) of the Internal Rev-  
5       enue Code of 1986, as added by this section, shall  
6       in no event occur before the 90th day after the date  
7       of the enactment of this Act.

8       **SEC. 341. TAX TREATMENT OF INVERTED CORPORATE EN-**  
9           **TITIES.**

10       (a) IN GENERAL.—Subchapter C of chapter 80 (re-  
11       lating to provisions affecting more than one subtitle) is  
12       amended by adding at the end the following new section:

13       **“SEC. 7874. RULES RELATING TO INVERTED CORPORATE**  
14           **ENTITIES.**

15       “(a) INVERTED CORPORATIONS TREATED AS DOMES-  
16       TIC CORPORATIONS.—

17           “(1) IN GENERAL.—If a foreign incorporated  
18       entity is treated as an inverted domestic corporation,  
19       then, notwithstanding section 7701(a)(4), such enti-  
20       ty shall be treated for purposes of this title as a do-  
21       mestic corporation.

22           “(2) INVERTED DOMESTIC CORPORATION.—For  
23       purposes of this section, a foreign incorporated enti-  
24       ty shall be treated as an inverted domestic corpora-

1       tion if, pursuant to a plan (or a series of related  
2       transactions)—

3               “(A) the entity completes after March 20,  
4               2002, the direct or indirect acquisition of sub-  
5               stantially all of the properties held directly or  
6               indirectly by a domestic corporation or substan-  
7               tially all of the properties constituting a trade  
8               or business of a domestic partnership,

9               “(B) after the acquisition at least 80 per-  
10              cent of the stock (by vote or value) of the entity  
11              is held—

12              “(i) in the case of an acquisition with  
13              respect to a domestic corporation, by  
14              former shareholders of the domestic cor-  
15              poration by reason of holding stock in the  
16              domestic corporation, or

17              “(ii) in the case of an acquisition with  
18              respect to a domestic partnership, by  
19              former partners of the domestic partner-  
20              ship by reason of holding a capital or prof-  
21              its interest in the domestic partnership,  
22              and

23              “(C) the expanded affiliated group which  
24              after the acquisition includes the entity does  
25              not have substantial business activities in the

1 foreign country in which or under the law of  
2 which the entity is created or organized when  
3 compared to the total business activities of such  
4 expanded affiliated group.

5 Except as provided in regulations, an acquisition of  
6 properties of a domestic corporation shall not be  
7 treated as described in subparagraph (A) if none of  
8 the corporation's stock was readily tradeable on an  
9 established securities market at any time during the  
10 4-year period ending on the date of the acquisition.

11 “(b) PRESERVATION OF DOMESTIC TAX BASE IN  
12 CERTAIN INVERSION TRANSACTIONS TO WHICH SUB-  
13 SECTION (a) DOES NOT APPLY.—

14 “(1) IN GENERAL.—If a foreign incorporated  
15 entity would be treated as an inverted domestic cor-  
16 poration with respect to an acquired entity if  
17 either—

18 “(A) subsection (a)(2)(A) were applied by  
19 substituting ‘after December 31, 1996, and on  
20 or before March 20, 2002’ for ‘after March 20,  
21 2002’ and subsection (a)(2)(B) were applied by  
22 substituting ‘more than 50 percent’ for ‘at least  
23 80 percent’, or

1           “(B) subsection (a)(2)(B) were applied by  
2           substituting ‘more than 50 percent’ for ‘at least  
3           80 percent’,  
4           then the rules of subsection (c) shall apply to any  
5           inversion gain of the acquired entity during the ap-  
6           plicable period and the rules of subsection (d) shall  
7           apply to any related party transaction of the ac-  
8           quired entity during the applicable period. This sub-  
9           section shall not apply for any taxable year if sub-  
10          section (a) applies to such foreign incorporated enti-  
11          ty for such taxable year.

12           “(2) ACQUIRED ENTITY.—For purposes of this  
13          section—

14           “(A) IN GENERAL.—The term ‘acquired  
15          entity’ means the domestic corporation or part-  
16          nership substantially all of the properties of  
17          which are directly or indirectly acquired in an  
18          acquisition described in subsection (a)(2)(A) to  
19          which this subsection applies.

20           “(B) AGGREGATION RULES.—Any domes-  
21          tic person bearing a relationship described in  
22          section 267(b) or 707(b) to an acquired entity  
23          shall be treated as an acquired entity with re-  
24          spect to the acquisition described in subpara-  
25          graph (A).

1           “(3) APPLICABLE PERIOD.—For purposes of  
2 this section—

3           “(A) IN GENERAL.—The term ‘applicable  
4 period’ means the period—

5           “(i) beginning on the first date prop-  
6 erties are acquired as part of the acquisi-  
7 tion described in subsection (a)(2)(A) to  
8 which this subsection applies, and

9           “(ii) ending on the date which is 10  
10 years after the last date properties are ac-  
11 quired as part of such acquisition.

12           “(B) SPECIAL RULE FOR INVERSIONS OC-  
13 CURRING BEFORE MARCH 21, 2002.—In the case  
14 of any acquired entity to which paragraph  
15 (1)(A) applies, the applicable period shall be the  
16 10-year period beginning on January 1, 2003.

17           “(c) TAX ON INVERSION GAINS MAY NOT BE OFF-  
18 SET.—If subsection (b) applies—

19           “(1) IN GENERAL.—The taxable income of an  
20 acquired entity (or any expanded affiliated group  
21 which includes such entity) for any taxable year  
22 which includes any portion of the applicable period  
23 shall in no event be less than the inversion gain of  
24 the entity for the taxable year.

1           “(2) CREDITS NOT ALLOWED AGAINST TAX ON  
2           INVERSION GAIN.—Credits shall be allowed against  
3           the tax imposed by this chapter on an acquired enti-  
4           ty for any taxable year described in paragraph (1)  
5           only to the extent such tax exceeds the product of—

6                   “(A) the amount of the inversion gain for  
7                   the taxable year, and

8                   “(B) the highest rate of tax specified in  
9                   section 11(b)(1).

10          For purposes of determining the credit allowed by  
11          section 901 inversion gain shall be treated as from  
12          sources within the United States.

13          “(3) SPECIAL RULES FOR PARTNERSHIPS.—In  
14          the case of an acquired entity which is a  
15          partnership—

16                   “(A) the limitations of this subsection shall  
17                   apply at the partner rather than the partner-  
18                   ship level,

19                   “(B) the inversion gain of any partner for  
20                   any taxable year shall be equal to the sum of—

21                           “(i) the partner’s distributive share of  
22                           inversion gain of the partnership for such  
23                           taxable year, plus

24                           “(ii) income or gain required to be  
25                           recognized for the taxable year by the part-



1           ner under section 367(a), 741, or 1001, or  
2           under any other provision of chapter 1, by  
3           reason of the transfer during the applica-  
4           ble period of any partnership interest of  
5           the partner in such partnership to the for-  
6           eign incorporated entity, and

7           “(C) the highest rate of tax specified in  
8           the rate schedule applicable to the partner  
9           under chapter 1 shall be substituted for the  
10          rate of tax under paragraph (2)(B).

11          “(4) INVERSION GAIN.—For purposes of this  
12          section, the term ‘inversion gain’ means any income  
13          or gain required to be recognized under section 304,  
14          311(b), 367, 1001, or 1248, or under any other pro-  
15          vision of chapter 1, by reason of the transfer during  
16          the applicable period of stock or other properties by  
17          an acquired entity—

18                 “(A) as part of the acquisition described in  
19                 subsection (a)(2)(A) to which subsection (b) ap-  
20                 plies, or

21                 “(B) after such acquisition to a foreign re-  
22                 lated person.

23          The Secretary may provide that income or gain from  
24          the sale of inventories or other transactions in the  
25          ordinary course of a trade or business shall not be

1 treated as inversion gain under subparagraph (B) to  
2 the extent the Secretary determines such treatment  
3 would not be inconsistent with the purposes of this  
4 section.

5 “(5) COORDINATION WITH SECTION 172 AND  
6 MINIMUM TAX.—Rules similar to the rules of para-  
7 graphs (3) and (4) of section 860E(a) shall apply  
8 for purposes of this section.

9 “(6) STATUTE OF LIMITATIONS.—

10 “(A) IN GENERAL.—The statutory period  
11 for the assessment of any deficiency attrib-  
12 utable to the inversion gain of any taxpayer for  
13 any pre-inversion year shall not expire before  
14 the expiration of 3 years from the date the Sec-  
15 retary is notified by the taxpayer (in such man-  
16 ner as the Secretary may prescribe) of the ac-  
17 quisition described in subsection (a)(2)(A) to  
18 which such gain relates and such deficiency  
19 may be assessed before the expiration of such  
20 3-year period notwithstanding the provisions of  
21 any other law or rule of law which would other-  
22 wise prevent such assessment.

23 “(B) PRE-INVERSION YEAR.—For purposes  
24 of subparagraph (A), the term ‘pre-inversion  
25 year’ means any taxable year if—

1 “(i) any portion of the applicable pe-  
2 riod is included in such taxable year, and

3 “(ii) such year ends before the taxable  
4 year in which the acquisition described in  
5 subsection (a)(2)(A) is completed.

6 “(d) SPECIAL RULES APPLICABLE TO RELATED  
7 PARTY TRANSACTIONS.—

8 “(1) ANNUAL APPLICATION FOR AGREEMENTS  
9 ON RETURN POSITIONS.—

10 “(A) IN GENERAL.—Each acquired entity  
11 to which subsection (b) applies shall file with  
12 the Secretary an application for an approval  
13 agreement under subparagraph (D) for each  
14 taxable year which includes a portion of the ap-  
15 plicable period. Such application shall be filed  
16 at such time and manner, and shall contain  
17 such information, as the Secretary may pre-  
18 scribe.

19 “(B) SECRETARIAL ACTION.—Within 90  
20 days of receipt of an application under subpara-  
21 graph (A) (or such longer period as the Sec-  
22 retary and entity may agree upon), the Sec-  
23 retary shall—

1 “(i) enter into an agreement described  
2 in subparagraph (D) for the taxable year  
3 covered by the application,

4 “(ii) notify the entity that the Sec-  
5 retary has determined that the application  
6 was filed in good faith and substantially  
7 complies with the requirements for the ap-  
8 plication under subparagraph (A), or

9 “(iii) notify the entity that the Sec-  
10 retary has determined that the application  
11 was not filed in good faith or does not sub-  
12 stantially comply with such requirements.

13 If the Secretary fails to act within the time pre-  
14 scribed under the preceding sentence, the entity  
15 shall be treated for purposes of this paragraph  
16 as having received notice under clause (ii).

17 “(C) FAILURES TO COMPLY.—If an ac-  
18 quired entity fails to file an application under  
19 subparagraph (A), or the acquired entity re-  
20 ceives a notice under subparagraph (B)(iii), for  
21 any taxable year, then for such taxable year—

22 “(i) there shall not be allowed any de-  
23 duction, or addition to basis or cost of  
24 goods sold, for amounts paid or incurred,  
25 or losses incurred, by reason of a trans-

1 action between the acquired entity and a  
2 foreign related person,

3 “(ii) any transfer or license of intan-  
4 gible property (as defined in section  
5 936(h)(3)(B)) between the acquired entity  
6 and a foreign related person shall be dis-  
7 regarded, and

8 “(iii) any cost-sharing arrangement  
9 between the acquired entity and a foreign  
10 related person shall be disregarded.

11 “(D) APPROVAL AGREEMENT.—For pur-  
12 poses of subparagraph (A), the term ‘approval  
13 agreement’ means a prefilling, advance pricing,  
14 or other agreement specified by the Secretary  
15 which contains such provisions as the Secretary  
16 determines necessary to ensure that the require-  
17 ments of sections 163(j), 267(a)(3), 482, and  
18 845, and any other provision of this title appli-  
19 cable to transactions between related persons  
20 and specified by the Secretary, are met.

21 “(E) TAX COURT REVIEW.—

22 “(i) IN GENERAL.—The Tax Court  
23 shall have jurisdiction over any action  
24 brought by an acquired entity receiving a  
25 notice under subparagraph (B)(iii) to de-

1           termine whether the issuance of the notice  
2           was an abuse of discretion, but only if the  
3           action is brought within 30 days after the  
4           date of the mailing (determined under  
5           rules similar to section 6213) of the notice.

6           “(ii) COURT ACTION.—The Tax Court  
7           shall issue its decision within 30 days after  
8           the filing of the action under clause (i) and  
9           may order the Secretary to issue a notice  
10          described in subparagraph (B)(ii).

11          “(iii) REVIEW.—An order of the Tax  
12          Court under this subparagraph shall be re-  
13          viewable in the same manner as any other  
14          decision of the Tax Court.

15          “(2) MODIFICATIONS OF LIMITATION ON INTER-  
16          EST DEDUCTION.—In the case of an acquired entity  
17          to which subsection (b) applies, section 163(j) shall  
18          be applied—

19                 “(A) without regard to paragraph  
20                 (2)(A)(ii) thereof, and

21                 “(B) by substituting ‘25 percent’ for ‘50  
22                 percent’ each place it appears in paragraph  
23                 (2)(B) thereof.

24          “(e) OTHER DEFINITIONS AND SPECIAL RULES.—  
25          For purposes of this section—

1           “(1) RULES FOR APPLICATION OF SUBSECTION  
2           (a)(2).—In applying subsection (a)(2) for purposes of  
3           subsections (a) and (b), the following rules shall  
4           apply:

5           “(A) CERTAIN STOCK DISREGARDED.—  
6           There shall not be taken into account in deter-  
7           mining ownership for purposes of subsection  
8           (a)(2)(B)—

9                   “(i) stock held by members of the ex-  
10                  panded affiliated group which includes the  
11                  foreign incorporated entity, or

12                   “(ii) stock of such entity which is sold  
13                  in a public offering or private placement  
14                  related to the acquisition described in sub-  
15                  section (a)(2)(A).

16           “(B) PLAN DEEMED IN CERTAIN CASES.—  
17           If a foreign incorporated entity acquires directly  
18           or indirectly substantially all of the properties  
19           of a domestic corporation or partnership during  
20           the 4-year period beginning on the date which  
21           is 2 years before the ownership requirements of  
22           subsection (a)(2)(B) are met with respect to  
23           such domestic corporation or partnership, such  
24           actions shall be treated as pursuant to a plan.

1                   “(C) CERTAIN TRANSFERS DIS-  
2 REGARDED.—The transfer of properties or li-  
3 abilities (including by contribution or distribu-  
4 tion) shall be disregarded if such transfers are  
5 part of a plan a principal purpose of which is  
6 to avoid the purposes of this section.

7                   “(D) SPECIAL RULE FOR RELATED PART-  
8 NERSHIPS.—For purposes of applying sub-  
9 section (a)(2) to the acquisition of a domestic  
10 partnership, except as provided in regulations,  
11 all partnerships which are under common con-  
12 trol (within the meaning of section 482) shall  
13 be treated as 1 partnership.

14                   “(E) TREATMENT OF CERTAIN RIGHTS.—  
15 The Secretary shall prescribe such regulations  
16 as may be necessary—

17                   “(i) to treat warrants, options, con-  
18 tracts to acquire stock, convertible debt in-  
19 struments, and other similar interests as  
20 stock, and

21                   “(ii) to treat stock as not stock.

22                   “(2) EXPANDED AFFILIATED GROUP.—The  
23 term ‘expanded affiliated group’ means an affiliated  
24 group as defined in section 1504(a) but without re-  
25 gard to section 1504(b)(3), except that section



1       1504(a) shall be applied by substituting ‘more than  
2       50 percent’ for ‘at least 80 percent’ each place it ap-  
3       pears.

4           “(3) FOREIGN INCORPORATED ENTITY.—The  
5       term ‘foreign incorporated entity’ means any entity  
6       which is, or but for subsection (a)(1) would be,  
7       treated as a foreign corporation for purposes of this  
8       title.

9           “(4) FOREIGN RELATED PERSON.—The term  
10      ‘foreign related person’ means, with respect to any  
11      acquired entity, a foreign person which—

12               “(A) bears a relationship to such entity de-  
13              scribed in section 267(b) or 707(b), or

14               “(B) is under the same common control  
15              (within the meaning of section 482) as such en-  
16              tity.

17           “(5) SUBSEQUENT ACQUISITIONS BY UNRE-  
18      LATED DOMESTIC CORPORATIONS.—

19               “(A) IN GENERAL.—Subject to such condi-  
20              tions, limitations, and exceptions as the Sec-  
21              retary may prescribe, if, after an acquisition de-  
22              scribed in subsection (a)(2)(A) to which sub-  
23              section (b) applies, a domestic corporation stock  
24              of which is traded on an established securities  
25              market acquires directly or indirectly any prop-

1           erties of one or more acquired entities in a  
2           transaction with respect to which the require-  
3           ments of subparagraph (B) are met, this sec-  
4           tion shall cease to apply to any such acquired  
5           entity with respect to which such requirements  
6           are met.

7                   “(B) REQUIREMENTS.—The requirements  
8           of the subparagraph are met with respect to a  
9           transaction involving any acquisition described  
10          in subparagraph (A) if—

11                   “(i) before such transaction the do-  
12           mestic corporation did not have a relation-  
13           ship described in section 267(b) or 707(b),  
14           and was not under common control (within  
15           the meaning of section 482), with the ac-  
16           quired entity, or any member of an ex-  
17           panded affiliated group including such en-  
18           tity, and

19                   “(ii) after such transaction, such ac-  
20           quired entity—

21                   “(I) is a member of the same ex-  
22           panded affiliated group which includes  
23           the domestic corporation or has such  
24           a relationship or is under such com-

1                   mon control with any member of such  
2                   group, and

3                   “(II) is not a member of, and  
4                   does not have such a relationship and  
5                   is not under such common control  
6                   with any member of, the expanded af-  
7                   filiated group which before such ac-  
8                   quisition included such entity.

9           “(f) REGULATIONS.—The Secretary shall provide  
10 such regulations as are necessary to carry out this section,  
11 including regulations providing for such adjustments to  
12 the application of this section as are necessary to prevent  
13 the avoidance of the purposes of this section, including the  
14 avoidance of such purposes through—

15               “(1) the use of related persons, pass-through or  
16               other noncorporate entities, or other intermediaries,  
17               or

18               “(2) transactions designed to have persons  
19               cease to be (or not become) members of expanded  
20               affiliated groups or related persons.”.

21           (b) TREATMENT OF AGREEMENTS.—

22               (1) CONFIDENTIALITY.—

23               (A) TREATMENT AS RETURN INFORMA-  
24               TION.—Section 6103(b)(2) (relating to return  
25               information) is amended by striking “and” at

1 the end of subparagraph (C), by inserting  
2 “and” at the end of subparagraph (D), and by  
3 inserting after subparagraph (D) the following  
4 new subparagraph:

5 “(E) any approval agreement under section  
6 7874(d)(1) to which any preceding subpara-  
7 graph does not apply and any background in-  
8 formation related to the agreement or any ap-  
9 plication for the agreement,”.

10 (B) EXCEPTION FROM PUBLIC INSPECTION  
11 AS WRITTEN DETERMINATION.—Section  
12 6110(b)(1)(B) is amended by striking “or (D)”  
13 and inserting “, (D), or (E)”.

14 (2) REPORTING.—The Secretary of the Treas-  
15 ury shall include with any report on advance pricing  
16 agreements required to be submitted after the date  
17 of the enactment of this Act under section 521(b) of  
18 the Ticket to Work and Work Incentives Improve-  
19 ment Act of 1999 (Public Law 106–170) a report  
20 regarding approval agreements under section  
21 7874(d)(1) of the Internal Revenue Code of 1986.  
22 Such report shall include information similar to the  
23 information required with respect to advance pricing  
24 agreements and shall be treated for confidentiality  
25 purposes in the same manner as the reports on ad-

1       vance pricing agreements are treated under section  
2       521(b)(3) of such Act.

3       (c) INFORMATION REPORTING.—The Secretary of the  
4       Treasury shall exercise the Secretary’s authority under the  
5       Internal Revenue Code of 1986 to require entities involved  
6       in transactions to which section 7874 of such Code (as  
7       added by subsection (a)) applies to report to the Secretary,  
8       shareholders, partners, and such other persons as the Sec-  
9       retary may prescribe such information as is necessary to  
10      ensure the proper tax treatment of such transactions.

11      (d) CONFORMING AMENDMENT.—The table of sec-  
12      tions for subchapter C of chapter 80 is amended by adding  
13      at the end the following new item:

“Sec. 7874. Rules relating to inverted corporate entities.”.

14      (e) TRANSITION RULE FOR CERTAIN REGULATED  
15      INVESTMENT COMPANIES AND UNIT INVESTMENT  
16      TRUSTS.—Notwithstanding section 7874 of the Internal  
17      Revenue Code of 1986 (as added by subsection (a)), a reg-  
18      ulated investment company, or other pooled fund or trust  
19      specified by the Secretary of the Treasury, may elect to  
20      recognize gain by reason of section 367(a) of such Code  
21      with respect to a transaction under which a foreign incor-  
22      porated entity is treated as an inverted domestic corpora-  
23      tion under section 7874(a) of such Code by reason of an  
24      acquisition completed after March 20, 2002, and before  
25      January 1, 2004.

1 **SEC. 342. EXCISE TAX ON STOCK COMPENSATION OF INSID-**  
2 **ERS IN INVERTED CORPORATIONS.**

3 (a) IN GENERAL.—Subtitle D is amended by adding  
4 at the end the following new chapter:

5 **“CHAPTER 48—STOCK COMPENSATION OF**  
6 **INSIDERS IN INVERTED CORPORATIONS**

“Sec. 5000A. Stock compensation of insiders in inverted corpora-  
tions entities.

7 **“SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN IN-**  
8 **VERTED CORPORATIONS.**

9 “(a) IMPOSITION OF TAX.—In the case of an indi-  
10 vidual who is a disqualified individual with respect to any  
11 inverted corporation, there is hereby imposed on such per-  
12 son a tax equal to 20 percent of the value (determined  
13 under subsection (b)) of the specified stock compensation  
14 held (directly or indirectly) by or for the benefit of such  
15 individual or a member of such individual’s family (as de-  
16 fined in section 267) at any time during the 12-month  
17 period beginning on the date which is 6 months before  
18 the inversion date.

19 “(b) VALUE.—For purposes of subsection (a)—

20 “(1) IN GENERAL.—The value of specified stock  
21 compensation shall be—

22 “(A) in the case of a stock option (or other  
23 similar right) or any stock appreciation right,  
24 the fair value of such option or right, and

1                   “(B) in any other case, the fair market  
2                   value of such compensation.

3                   “(2) DATE FOR DETERMINING VALUE.—The  
4                   determination of value shall be made—

5                   “(A) in the case of specified stock com-  
6                   pensation held on the inversion date, on such  
7                   date,

8                   “(B) in the case of such compensation  
9                   which is canceled during the 6 months before  
10                  the inversion date, on the day before such can-  
11                  cellation, and

12                  “(C) in the case of such compensation  
13                  which is granted after the inversion date, on the  
14                  date such compensation is granted.

15                  “(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN  
16                  RECOGNIZED.—Subsection (a) shall apply to any disquali-  
17                  fied individual with respect to an inverted corporation only  
18                  if gain (if any) on any stock in such corporation is recog-  
19                  nized in whole or part by any shareholder by reason of  
20                  the acquisition referred to in section 7874(a)(2)(A) (deter-  
21                  mined by substituting ‘July 10, 2002’ for ‘March 20,  
22                  2002’) with respect to such corporation.

23                  “(d) EXCEPTION WHERE GAIN RECOGNIZED ON  
24                  COMPENSATION.—Subsection (a) shall not apply to—

1           “(1) any stock option which is exercised on the  
2           inversion date or during the 6-month period before  
3           such date and to the stock acquired in such exercise,  
4           and

5           “(2) any specified stock compensation which is  
6           sold, exchanged, or distributed during such period in  
7           a transaction in which gain or loss is recognized in  
8           full.

9           “(e) DEFINITIONS.—For purposes of this section—

10           “(1) DISQUALIFIED INDIVIDUAL.—The term  
11           ‘disqualified individual’ means, with respect to a cor-  
12           poration, any individual who, at any time during the  
13           12-month period beginning on the date which is 6  
14           months before the inversion date—

15           “(A) is subject to the requirements of sec-  
16           tion 16(a) of the Securities Exchange Act of  
17           1934 with respect to such corporation or any  
18           member of the expanded affiliated group which  
19           includes such corporation, or

20           “(B) would be subject to such require-  
21           ments if such corporation or member were an  
22           issuer of equity securities referred to in such  
23           section.

24           “(2) INVERTED CORPORATION; INVERSION  
25           DATE.—



1           “(A) INVERTED CORPORATION.—The term  
2           ‘inverted corporation’ means any corporation to  
3           which subsection (a) or (b) of section 7874 ap-  
4           plies determined—

5                   “(i) by substituting ‘July 10, 2002’  
6                   for ‘March 20, 2002’ in section  
7                   7874(a)(2)(A), and

8                   “(ii) without regard to subsection  
9                   (b)(1)(A).

10          Such term includes any predecessor or suc-  
11          cessor of such a corporation.

12           “(B) INVERSION DATE.—The term ‘inver-  
13          sion date’ means, with respect to a corporation,  
14          the date on which the corporation first becomes  
15          an inverted corporation.

16          “(3) SPECIFIED STOCK COMPENSATION.—

17                   “(A) IN GENERAL.—The term ‘specified  
18          stock compensation’ means payment (or right  
19          to payment) granted by the inverted corpora-  
20          tion (or by any member of the expanded affili-  
21          ated group which includes such corporation) to  
22          any person in connection with the performance  
23          of services by a disqualified individual for such  
24          corporation or member if the value of such pay-  
25          ment or right is based on (or determined by ref-

1           erence to) the value (or change in value) of  
2           stock in such corporation (or any such mem-  
3           ber).

4           “(B) EXCEPTIONS.—Such term shall not  
5           include—

6                   “(i) any option to which part II of  
7                   subchapter D of chapter 1 applies, or

8                   “(ii) any payment or right to payment  
9                   from a plan referred to in section  
10                  280G(b)(6).

11           “(4) EXPANDED AFFILIATED GROUP.—The  
12           term ‘expanded affiliated group’ means an affiliated  
13           group (as defined in section 1504(a) without regard  
14           to section 1504(b)(3)); except that section 1504(a)  
15           shall be applied by substituting ‘more than 50 per-  
16           cent’ for ‘at least 80 percent’ each place it appears.

17           “(f) SPECIAL RULES.—For purposes of this  
18           section—

19                   “(1) CANCELLATION OF RESTRICTION.—The  
20                   cancellation of a restriction which by its terms will  
21                   never lapse shall be treated as a grant.

22                   “(2) PAYMENT OR REIMBURSEMENT OF TAX BY  
23                   CORPORATION TREATED AS SPECIFIED STOCK COM-  
24                   PENSATION.—Any payment of the tax imposed by  
25                   this section directly or indirectly by the inverted cor-

1       poration or by any member of the expanded affili-  
2       ated group which includes such corporation—

3               “(A) shall be treated as specified stock  
4       compensation, and

5               “(B) shall not be allowed as a deduction  
6       under any provision of chapter 1.

7               “(3) CERTAIN RESTRICTIONS IGNORED.—  
8       Whether there is specified stock compensation, and  
9       the value thereof, shall be determined without regard  
10      to any restriction other than a restriction which by  
11      its terms will never lapse.

12              “(4) PROPERTY TRANSFERS.—Any transfer of  
13      property shall be treated as a payment and any right  
14      to a transfer of property shall be treated as a right  
15      to a payment.

16              “(5) OTHER ADMINISTRATIVE PROVISIONS.—  
17      For purposes of subtitle F, any tax imposed by this  
18      section shall be treated as a tax imposed by subtitle  
19      A.

20              “(g) REGULATIONS.—The Secretary shall prescribe  
21      such regulations as may be necessary or appropriate to  
22      carry out the purposes of this section.”.

23              (b) DENIAL OF DEDUCTION.—

24                      (1) IN GENERAL.—Paragraph (6) of section  
25      275(a) is amended by inserting “48,” after “46,”.

1           (2) \$1,000,000 LIMIT ON DEDUCTIBLE COM-  
2 PENSATION REDUCED BY PAYMENT OF EXCISE TAX  
3 ON SPECIFIED STOCK COMPENSATION.—Paragraph  
4 (4) of section 162(m) is amended by adding at the  
5 end the following new subparagraph:

6           “(G) COORDINATION WITH EXCISE TAX ON  
7 SPECIFIED STOCK COMPENSATION.—The dollar  
8 limitation contained in paragraph (1) with re-  
9 spect to any covered employee shall be reduced  
10 (but not below zero) by the amount of any pay-  
11 ment (with respect to such employee) of the tax  
12 imposed by section 5000A directly or indirectly  
13 by the inverted corporation (as defined in such  
14 section) or by any member of the expanded af-  
15 filiated group (as defined in such section) which  
16 includes such corporation.”.

17 (c) CONFORMING AMENDMENTS.—

18           (1) The last sentence of section 3121(v)(2)(A)  
19 is amended by inserting before the period “or to any  
20 specified stock compensation (as defined in section  
21 5000A) on which tax is imposed by section 5000A”.

22           (2) The table of chapters for subtitle D is  
23 amended by adding at the end the following new  
24 item:

“Chapter 48. Stock compensation of insiders in inverted corpora-  
tions.”.

1 (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect on July 11, 2002; except that  
3 periods before such date shall not be taken into account  
4 in applying the periods in subsections (a) and (e)(1) of  
5 section 5000A of the Internal Revenue Code of 1986, as  
6 added by this section.

7 **SEC. 343. REINSURANCE OF UNITED STATES RISKS IN FOR-**  
8 **EIGN JURISDICTIONS.**

9 (a) IN GENERAL.—Section 845(a) (relating to alloca-  
10 tion in case of reinsurance agreement involving tax avoid-  
11 ance or evasion) is amended by striking “source and char-  
12 acter” and inserting “amount, source, or character”.

13 (b) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to any risk reinsured after April  
15 11, 2002.

16 **PART II—OTHER PROVISIONS**

17 **SEC. 344. DOUBLING OF CERTAIN PENALTIES, FINES, AND**  
18 **INTEREST ON UNDERPAYMENTS RELATED TO**  
19 **CERTAIN OFFSHORE FINANCIAL ARRANGE-**  
20 **MENT.**

21 (a) GENERAL RULE.—If—

22 (1) a taxpayer eligible to participate in the De-  
23 partment of the Treasury’s Offshore Voluntary Com-  
24 pliance Initiative did not participate in such initia-  
25 tive, and

1           (2) any interest or applicable penalty is imposed  
2           with respect to any arrangement to which such ini-  
3           tiative applied or to any underpayment of Federal  
4           income tax attributable to items arising in connec-  
5           tion with such arrangement,

6           then, notwithstanding any other provision of law, the  
7           amount of such interest or penalty shall be equal to twice  
8           that determined without regard to this section.

9           (b) DEFINITIONS AND RULES.—For purposes of this  
10          section—

11           (1) APPLICABLE PENALTY.—The term “appli-  
12           cable penalty” means any penalty, addition to tax,  
13           or fine imposed under chapter 68 of the Internal  
14           Revenue Code of 1986.

15           (2) VOLUNTARY OFFSHORE COMPLIANCE INI-  
16           TIATIVE.—The term “Voluntary Offshore Compli-  
17           ance Initiative” means the program established by  
18           the Department of the Treasury in January of 2003  
19           under which any taxpayer was eligible to voluntarily  
20           disclose previously undisclosed income on assets  
21           placed in offshore accounts and accessed through  
22           credit card and other financial arrangements.

23           (3) PARTICIPATION.—A taxpayer shall be treat-  
24           ed as having participated in the Voluntary Offshore  
25           Compliance Initiative if the taxpayer submitted the

1 request in a timely manner and all information re-  
2 quested by the Secretary of the Treasury or his dele-  
3 gate within a reasonable period of time following the  
4 request.

5 (c) EFFECTIVE DATE.—The provisions of this section  
6 shall apply to interest penalties, additions to tax, and fines  
7 with respect to any taxable year if as of May 8, 2003,  
8 the assessment of any tax, penalty, or interest with respect  
9 to such taxable year is not prevented by the operation of  
10 any law or rule of law.

11 **SEC. 345. EFFECTIVELY CONNECTED INCOME TO INCLUDE**  
12 **CERTAIN FOREIGN SOURCE INCOME.**

13 (a) IN GENERAL.—Section 864(c)(4)(B) (relating to  
14 treatment of income from sources without the United  
15 States as effectively connected income) is amended by add-  
16 ing at the end the following new flush sentence:

17 “Any income or gain which is equivalent to any  
18 item of income or gain described in clause (i),  
19 (ii), or (iii) shall be treated in the same manner  
20 as such item for purposes of this subpara-  
21 graph.”.

22 (b) EFFECTIVE DATE.—The amendment made by  
23 this section shall apply to taxable years beginning after  
24 the date of the enactment of this Act.

1 **SEC. 346. DETERMINATION OF BASIS OF AMOUNTS PAID**  
2 **FROM FOREIGN PENSION PLANS.**

3 (a) IN GENERAL.—Section 72 (relating to annuities  
4 and certain proceeds of endowment and life insurance con-  
5 tracts) is amended by redesignating subsection (w) as sub-  
6 section (x) by inserting subsection (v) the following new  
7 subsection:

8 “(w) DETERMINATION OF BASIS OF FOREIGN PEN-  
9 SION PLANS.—Notwithstanding any other provision of  
10 this section, for purposes of determining the portion of  
11 any distribution from a foreign pension plan which is in-  
12 cludible in gross income of the distributee, the investment  
13 in the contract with respect to the plan shall not include  
14 employer or employee contributions to the plan (or any  
15 earnings on such contributions) unless such contributions  
16 or earnings were subject to taxation by the United States  
17 or any foreign government.”.

18 (b) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to distributions on or after the date  
20 of the enactment of this Act.

21 **SEC. 347. RECAPTURE OF OVERALL FOREIGN LOSSES ON**  
22 **SALE OF CONTROLLED FOREIGN CORPORA-**  
23 **TION.**

24 (a) IN GENERAL.—Section 904(f)(3) (relating to dis-  
25 positions) is amending by adding at the end the following  
26 new subparagraph:



1           “(D) APPLICATION TO DISPOSITIONS OF  
2 STOCK IN CONTROLLED FOREIGN CORPORA-  
3 TIONS.—In the case of any disposition by a tax-  
4 payer of any share of stock in a controlled for-  
5 eign corporation (as defined in section 957),  
6 this paragraph shall apply to such disposition in  
7 the same manner as if it were a disposition of  
8 property described in subparagraph (A), except  
9 that the exception contained in subparagraph  
10 (C)(i) shall not apply.”.

11       (b) EFFECTIVE DATE.—The amendment made by  
12 this section shall apply to dispositions after the date of  
13 the enactment of this Act.

14 **SEC. 348. PREVENTION OF MISMATCHING OF INTEREST**  
15 **AND ORIGINAL ISSUE DISCOUNT DEDUC-**  
16 **TIONS AND INCOME INCLUSIONS IN TRANS-**  
17 **ACTIONS WITH RELATED FOREIGN PERSONS.**

18       (a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3)  
19 (relating to special rule for original issue discount on obli-  
20 gation held by related foreign person) is amended by re-  
21 designating subparagraph (B) as subparagraph (C) and  
22 by inserting after subparagraph (A) the following new sub-  
23 paragraph:

24           “(B) SPECIAL RULE FOR CERTAIN FOR-  
25 EIGN ENTITIES.—Notwithstanding subpara-

1 graph (A) (and any regulations thereunder), in  
2 the case of any debt instrument having original  
3 issue discount which is held by a related foreign  
4 person which is a foreign personal holding com-  
5 pany (as defined in section 552), a controlled  
6 foreign corporation (as defined in section 957),  
7 or a passive foreign investment company (as de-  
8 fined in section 1297), a deduction shall be al-  
9 lowable to the issuer with respect to such origi-  
10 nal issue discount for any taxable year only to  
11 the extent such original issue discount is in-  
12 cluded during such taxable year in the gross in-  
13 come of a United States person who owns  
14 (within the meaning of section 958(a)) stock in  
15 such corporation. For purposes of this subpara-  
16 graph, the determination as to the proper allo-  
17 cation of the original issue discount to share-  
18 holders shall be made in such manner as the  
19 Secretary may prescribe.”.

20 (b) INTEREST AND OTHER DEDUCTIBLE  
21 AMOUNTS.—Section 267(a)(3) is amended—

22 (1) by striking “The Secretary” and inserting:

23 “(A) IN GENERAL.—The Secretary”, and

24 (2) by adding at the end the following new sub-  
25 paragraph:

1           “(B) SPECIAL RULE FOR CERTAIN FOR-  
2           EIGN ENTITIES.—Notwithstanding any regula-  
3           tions issued under subparagraph (A), in the  
4           case of any amount payable to a foreign per-  
5           sonal holding company (as defined in section  
6           552), a controlled foreign corporation (as de-  
7           fined in section 957), or a passive foreign in-  
8           vestment company (as defined in section 1297),  
9           a deduction shall be allowable to the payor with  
10          respect to such amount for any taxable year  
11          only to the extent such amount is included dur-  
12          ing such taxable year in the gross income of a  
13          United States person who owns (within the  
14          meaning of section 958(a)) stock in such cor-  
15          poration. For purposes of this subparagraph,  
16          the determination as to the proper allocation of  
17          such amount to shareholders shall be made in  
18          such manner as the Secretary may prescribe.”.

19          (c) EFFECTIVE DATE.—The amendments made by  
20          this section shall apply to payments accrued on or after  
21          May 8, 2003.

22       **SEC. 349. SALE OF GASOLINE AND DIESEL FUEL AT DUTY-**  
23       **FREE SALES ENTERPRISES.**

24          (a) PROHIBITION.—Section 555(b) of the Tariff Act  
25          of 1930 (19 U.S.C. 1555(b)) is amended—

1           (1) by redesignating paragraphs (6) through  
2           (8) as paragraphs (7) through (9), respectively; and  
3           (2) by inserting after paragraph (5) the fol-  
4           lowing:

5           “(6) Any gasoline or diesel fuel sold at a duty-  
6           free sales enterprise shall be considered to be en-  
7           tered for consumption into the customs territory of  
8           the United States.”.

9           (b) CONSTRUCTION.—The amendments made by this  
10          section shall not be construed to create any inference with  
11          respect to the interpretation of any provision of law as  
12          such provision was in effect on the day before the date  
13          of enactment of this Act.

14          (c) EFFECTIVE DATE.—The amendments made by  
15          this section shall take effect on the date of enactment of  
16          this Act.

17       **SEC. 350. REPEAL OF EARNED INCOME EXCLUSION OF CITI-**  
18                               **ZENS OR RESIDENTS LIVING ABROAD.**

19          (a) REPEAL.—Section 911 (relating to citizens or  
20          residents living abroad) is amended by adding at the end  
21          the following new subsection:

22          “(g) TERMINATION.—This section shall not apply to  
23          any taxable year beginning after December 31, 2003.”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2003.

4 **Subtitle E—Other Revenue**  
5 **Provisions**

6 **SEC. 351. EXTENSION OF INTERNAL REVENUE SERVICE**  
7 **USER FEES.**

8 (a) IN GENERAL.—Chapter 77 (relating to miscella-  
9 neous provisions) is amended by adding at the end the  
10 following new section:

11 **“SEC. 7528. INTERNAL REVENUE SERVICE USER FEES.**

12 “(a) GENERAL RULE.—The Secretary shall establish  
13 a program requiring the payment of user fees for—

14 “(1) requests to the Internal Revenue Service  
15 for ruling letters, opinion letters, and determination  
16 letters, and

17 “(2) other similar requests.

18 “(b) PROGRAM CRITERIA.—

19 “(1) IN GENERAL.—The fees charged under the  
20 program required by subsection (a)—

21 “(A) shall vary according to categories (or  
22 subcategories) established by the Secretary,

23 “(B) shall be determined after taking into  
24 account the average time for (and difficulty of)

1 complying with requests in each category (and  
2 subcategory), and

3 “(C) shall be payable in advance.

4 “(2) EXEMPTIONS, ETC.—

5 “(A) IN GENERAL.—The Secretary shall  
6 provide for such exemptions (and reduced fees)  
7 under such program as the Secretary deter-  
8 mines to be appropriate.

9 “(B) EXEMPTION FOR CERTAIN REQUESTS  
10 REGARDING PENSION PLANS.—The Secretary  
11 shall not require payment of user fees under  
12 such program for requests for determination  
13 letters with respect to the qualified status of a  
14 pension benefit plan maintained solely by 1 or  
15 more eligible employers or any trust which is  
16 part of the plan. The preceding sentence shall  
17 not apply to any request—

18 “(i) made after the later of—

19 “(I) the fifth plan year the pen-  
20 sion benefit plan is in existence, or

21 “(II) the end of any remedial  
22 amendment period with respect to the  
23 plan beginning within the first 5 plan  
24 years, or

1                   “(ii) made by the sponsor of any pro-  
2                   totype or similar plan which the sponsor  
3                   intends to market to participating employ-  
4                   ers.

5 “(C) DEFINITIONS AND SPECIAL RULES.—  
6 For purposes of subparagraph (B)—

7 “(i) PENSION BENEFIT PLAN.—The  
8 term ‘pension benefit plan’ means a pen-  
9 sion, profit-sharing, stock bonus, annuity,  
10 or employee stock ownership plan.

“(ii) ELIGIBLE EMPLOYER.—The term ‘eligible employer’ means an eligible employer (as defined in section 408(p)(2)(C)(i)(I)) which has at least 1 employee who is not a highly compensated employee (as defined in section 414(q)) and is participating in the plan. The determination of whether an employer is an eligible employer under subparagraph (B) shall be made as of the date of the request described in such subparagraph.

22 “(iii) DETERMINATION OF AVERAGE  
23 FEES CHARGED.—For purposes of any de-  
24 termination of average fees charged, any

1 request to which subparagraph (B) applies  
2 shall not be taken into account.

3 “(3) AVERAGE FEE REQUIREMENT.—The aver-  
4 age fee charged under the program required by sub-  
5 section (a) shall not be less than the amount deter-  
6 mined under the following table:

“Category	Average Fee
Employee plan ruling and opinion .....	\$250
Exempt organization ruling .....	\$350
Employee plan determination .....	\$300
Exempt organization determination .....	\$275
Chief counsel ruling .....	\$200.

7 “(c) TERMINATION.—No fee shall be imposed under  
8 this section with respect to requests made after September  
9 30, 2013.”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) The table of sections for chapter 77 is  
12 amended by adding at the end the following new  
13 item:

“Sec. 7528. Internal Revenue Service user fees.”.

14 (2) Section 10511 of the Revenue Act of 1987  
15 is repealed.

16 (3) Section 620 of the Economic Growth and  
17 Tax Relief Reconciliation Act of 2001 is repealed.

18 (c) LIMITATIONS.—Notwithstanding any other provi-  
19 sion of law, any fees collected pursuant to section 7528  
20 of the Internal Revenue Code of 1986, as added by sub-



1 section (a), shall not be expended by the Internal Revenue  
2 Service unless provided by an appropriations Act.

3 (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to requests made after the date  
5 of the enactment of this Act.

6 **SEC. 352. ADDITION OF VACCINES AGAINST HEPATITIS A**  
7 **TO LIST OF TAXABLE VACCINES.**

8 (a) IN GENERAL.—Section 4132(a)(1) (defining tax-  
9 able vaccine) is amended by redesignating subparagraphs  
10 (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and  
11 (M), respectively, and by inserting after subparagraph (H)  
12 the following new subparagraph:

13 “(I) Any vaccine against hepatitis A.”.

14 (b) CONFORMING AMENDMENT.—Section  
15 9510(c)(1)(A) is amended by striking “October 18, 2000”  
16 and inserting “May 8, 2003”.

17 (c) EFFECTIVE DATE.—

18 (1) SALES, ETC.—The amendments made by  
19 this section shall apply to sales and uses on or after  
20 the first day of the first month which begins more  
21 than 4 weeks after the date of the enactment of this  
22 Act.

23 (2) DELIVERIES.—For purposes of paragraph  
24 (1) and section 4131 of the Internal Revenue Code  
25 of 1986, in the case of sales on or before the effec-

1       tive date described in such paragraph for which de-  
2       livery is made after such date, the delivery date shall  
3       be considered the sale date.

4   **SEC. 353. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS**  
5                   **TRANSFERS.**

6       (a) TREATMENT OF CONTRIBUTED PROPERTY WITH  
7   BUILT-IN LOSS.—Paragraph (1) of section 704(c) is  
8   amended by striking “and” at the end of subparagraph  
9   (A), by striking the period at the end of subparagraph  
10   (B) and inserting “, and”, and by adding at the end the  
11   following:

12                   “(C) if any property so contributed has a  
13       built-in loss—

14                   “(i) such built-in loss shall be taken  
15       into account only in determining the  
16       amount of items allocated to the contrib-  
17       uting partner, and

18                   “(ii) except as provided in regulations,  
19       in determining the amount of items allo-  
20       cated to other partners, the basis of the  
21       contributed property in the hands of the  
22       partnership shall be treated as being equal  
23       to its fair market value immediately after  
24       the contribution.

1 For purposes of subparagraph (C), the term ‘built-  
2 in loss’ means the excess of the adjusted basis of the  
3 property (determined without regard to subpara-  
4 graph (C)(ii)) over its fair market value immediately  
5 after the contribution.”.

6 (b) ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-  
7 erty ON TRANSFER OF PARTNERSHIP INTEREST IF  
8 THERE IS SUBSTANTIAL BUILT-IN LOSS.—

9 (1) ADJUSTMENT REQUIRED.—Subsection (a)  
10 of section 743 (relating to optional adjustment to  
11 basis of partnership property) is amended by insert-  
12 ing before the period “or unless the partnership has  
13 a substantial built-in loss immediately after such  
14 transfer”.

15 (2) ADJUSTMENT.—Subsection (b) of section  
16 743 is amended by inserting “or with respect to  
17 which there is a substantial built-in loss immediately  
18 after such transfer” after “section 754 is in effect”.

19 (3) SUBSTANTIAL BUILT-IN LOSS.—Section 743  
20 is amended by adding at the end the following new  
21 subsection:

22 “(d) SUBSTANTIAL BUILT-IN LOSS.—

23 “(1) IN GENERAL.—For purposes of this sec-  
24 tion, a partnership has a substantial built-in loss  
25 with respect to a transfer of an interest in a part-

1       nership if the transferee partner's proportionate  
2       share of the adjusted basis of the partnership prop-  
3       erty exceeds by more than \$250,000 the basis of  
4       such partner's interest in the partnership.

5           “(2) REGULATIONS.—The Secretary shall pre-  
6       scribe such regulations as may be appropriate to  
7       carry out the purposes of paragraph (1) and section  
8       734(d), including regulations aggregating related  
9       partnerships and disregarding property acquired by  
10      the partnership in an attempt to avoid such pur-  
11      poses.”.

12           (4) CLERICAL AMENDMENTS.—

13           (A) The section heading for section 743 is  
14      amended to read as follows:

15   **“SEC. 743. ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-**  
16           **ERTY WHERE SECTION 754 ELECTION OR**  
17           **SUBSTANTIAL BUILT-IN LOSS.”.**

18           (B) The table of sections for subpart C of  
19      part II of subchapter K of chapter 1 is amend-  
20      ed by striking the item relating to section 743  
21      and inserting the following new item:

      “Sec. 743. Adjustment to basis of partnership property where sec-  
          tion 754 election or substantial built-in loss.”.

22           (c) **ADJUSTMENT TO BASIS OF UNDISTRIBUTED**  
23      **PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL**  
24      **BASIS REDUCTION.—**

1           (1) ADJUSTMENT REQUIRED.—Subsection (a)  
2       of section 734 (relating to optional adjustment to  
3       basis of undistributed partnership property) is  
4       amended by inserting before the period “or unless  
5       there is a substantial basis reduction”.

6           (2) ADJUSTMENT.—Subsection (b) of section  
7       734 is amended by inserting “or unless there is a  
8       substantial basis reduction” after “section 754 is in  
9       effect”.

10          (3) SUBSTANTIAL BASIS REDUCTION.—Section  
11       734 is amended by adding at the end the following  
12       new subsection:

13       “(d) SUBSTANTIAL BASIS REDUCTION.—

14           “(1) IN GENERAL.—For purposes of this sec-  
15       tion, there is a substantial basis reduction with re-  
16       spect to a distribution if the sum of the amounts de-  
17       scribed in subparagraphs (A) and (B) of subsection  
18       (b)(2) exceeds \$250,000.

19           “(2) REGULATIONS.—

**“For regulations to carry out this subsection, see  
          section 743(d)(2).”.**

20          (4) CLERICAL AMENDMENTS.—

21           (A) The section heading for section 734 is  
22       amended to read as follows:

1 **“SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED**  
2 **PARTNERSHIP PROPERTY WHERE SECTION**  
3 **754 ELECTION OR SUBSTANTIAL BASIS RE-**  
4 **DUCTION.”.**

5 (B) The table of sections for subpart B of  
6 part II of subchapter K of chapter 1 is amend-  
7 ed by striking the item relating to section 734  
8 and inserting the following new item:

“Sec. 734. Adjustment to basis of undistributed partnership prop-  
erty where section 754 election or substantial basis  
reduction.”.

9 (d) **EFFECTIVE DATES.—**

10 (1) **SUBSECTION (a).—**The amendment made  
11 by subsection (a) shall apply to contributions made  
12 after the date of the enactment of this Act.

13 (2) **SUBSECTION (b).—**The amendments made  
14 by subsection (b) shall apply to transfers after the  
15 date of the enactment of this Act.

16 (3) **SUBSECTION (c).—**The amendments made  
17 by subsection (c) shall apply to distributions after  
18 the date of the enactment of this Act.

19 **SEC. 354. TREATMENT OF STRIPPED INTERESTS IN BOND**  
20 **AND PREFERRED STOCK FUNDS, ETC.**

21 (a) **IN GENERAL.—**Section 1286 (relating to tax  
22 treatment of stripped bonds) is amended by redesignating  
23 subsection (f) as subsection (g) and by inserting after sub-  
24 section (e) the following new subsection:

1       “(f) TREATMENT OF STRIPPED INTERESTS IN BOND  
2 AND PREFERRED STOCK FUNDS, ETC.—In the case of an  
3 account or entity substantially all of the assets of which  
4 consist of bonds, preferred stock, or a combination thereof,  
5 the Secretary may by regulations provide that rules simi-  
6 lar to the rules of this section and 305(e), as appropriate,  
7 shall apply to interests in such account or entity to which  
8 (but for this subsection) this section or section 305(e), as  
9 the case may be, would not apply.”.

10       (b) CROSS REFERENCE.—Subsection (e) of section  
11 305 is amended by adding at the end the following new  
12 paragraph:

13               “(7) CROSS REFERENCE.—

**“For treatment of stripped interests in certain ac-  
counts or entities holding preferred stock, see sec-  
tion 1286(f).”.**

14       (c) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to purchases and dispositions after  
16 the date of the enactment of this Act.

17 **SEC. 355. REPORTING OF TAXABLE MERGERS AND ACQUISI-**  
18 **TIONS.**

19       (a) IN GENERAL.—Subpart B of part III of sub-  
20 chapter A of chapter 61 is amended by inserting after sec-  
21 tion 6043 the following new section:

22 **“SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.**

23       “(a) IN GENERAL.—The acquiring corporation in any  
24 taxable acquisition shall make a return (according to the

1 forms or regulations prescribed by the Secretary) setting  
2 forth—

3 “(1) a description of the acquisition,

4 “(2) the name and address of each shareholder  
5 of the acquired corporation who is required to recog-  
6 nize gain (if any) as a result of the acquisition,

7 “(3) the amount of money and the fair market  
8 value of other property transferred to each such  
9 shareholder as part of such acquisition, and

10 “(4) such other information as the Secretary  
11 may prescribe.

12 To the extent provided by the Secretary, the requirements  
13 of this section applicable to the acquiring corporation shall  
14 be applicable to the acquired corporation and not to the  
15 acquiring corporation.

16 “(b) NOMINEE REPORTING.—Any person who holds  
17 stock as a nominee for another person shall furnish in the  
18 manner prescribed by the Secretary to such other person  
19 the information provided by the corporation under sub-  
20 section (d).

21 “(c) TAXABLE ACQUISITION.—For purposes of this  
22 section, the term ‘taxable acquisition’ means any acqui-  
23 sition by a corporation of stock in or property of another  
24 corporation if any shareholder of the acquired corporation



1 is required to recognize gain (if any) as a result of such  
2 acquisition.

3 “(d) STATEMENTS TO BE FURNISHED TO SHARE-  
4 HOLDERS.—Every person required to make a return under  
5 subsection (a) shall furnish to each shareholder whose  
6 name is required to be set forth in such return a written  
7 statement showing—

8 “(1) the name, address, and phone number of  
9 the information contact of the person required to  
10 make such return,

11 “(2) the information required to be shown on  
12 such return with respect to such shareholder, and

13 “(3) such other information as the Secretary  
14 may prescribe.

15 The written statement required under the preceding sen-  
16 tence shall be furnished to the shareholder on or before  
17 January 31 of the year following the calendar year during  
18 which the taxable acquisition occurred.”.

19 (b) ASSESSABLE PENALTIES.—

20 (1) Subparagraph (B) of section 6724(d)(1)  
21 (relating to definitions) is amended by redesignating  
22 clauses (ii) through (xvii) as clauses (iii) through  
23 (xviii), respectively, and by inserting after clause (i)  
24 the following new clause:

1 “(ii) section 6043A(a) (relating to re-  
2 turns relating to taxable mergers and ac-  
3 quisitions),”.

4 (2) Paragraph (2) of section 6724(d) is amend-  
5 ed by redesignating subparagraphs (F) through  
6 (AA) as subparagraphs (G) through (BB), respec-  
7 tively, and by inserting after subparagraph (E) the  
8 following new subparagraph:

9 “(F) subsections (b) and (d) of section  
10 6043A (relating to returns relating to taxable  
11 mergers and acquisitions).”.

12 (c) CLERICAL AMENDMENT.—The table of sections  
13 for subpart B of part III of subchapter A of chapter 61  
14 is amended by inserting after the item relating to section  
15 6043 the following new item:

“Sec. 6043A. Returns relating to taxable mergers and acqui-  
sitions.”.

16 (d) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to acquisitions after the date of  
18 the enactment of this Act.

19 **SEC. 356. MINIMUM HOLDING PERIOD FOR FOREIGN TAX**  
20 **CREDIT ON WITHHOLDING TAXES ON INCOME**  
21 **OTHER THAN DIVIDENDS.**

22 (a) IN GENERAL.—Section 901 is amended by redes-  
23 ignating subsection (l) as subsection (m) and by inserting  
24 after subsection (k) the following new subsection:

1       “(l) MINIMUM HOLDING PERIOD FOR WITHHOLDING  
2 TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS  
3 ETC.—

4           “(1) IN GENERAL.—In no event shall a credit  
5 be allowed under subsection (a) for any withholding  
6 tax (as defined in subsection (k)) on any item of in-  
7 come or gain with respect to any property if—

8           “(A) such property is held by the recipient  
9 of the item for 15 days or less during the 30-  
10 day period beginning on the date which is 15  
11 days before the date on which the right to re-  
12 ceive payment of such item arises, or

13           “(B) to the extent that the recipient of the  
14 item is under an obligation (whether pursuant  
15 to a short sale or otherwise) to make related  
16 payments with respect to positions in substan-  
17 tially similar or related property.

18       This paragraph shall not apply to any dividend to  
19 which subsection (k) applies.

20           “(2) EXCEPTION FOR TAXES PAID BY DEAL-  
21 ERS.—

22           “(A) IN GENERAL.—Paragraph (1) shall  
23 not apply to any qualified tax with respect to  
24 any property held in the active conduct in a for-

1           eign country of a business as a dealer in such  
2           property.

3           “(B) QUALIFIED TAX.—For purposes of  
4           subparagraph (A), the term ‘qualified tax’  
5           means a tax paid to a foreign country (other  
6           than the foreign country referred to in subpara-  
7           graph (A)) if—

8                   “(i) the item to which such tax is at-  
9                   tributable is subject to taxation on a net  
10                  basis by the country referred to in sub-  
11                  paragraph (A), and

12                   “(ii) such country allows a credit  
13                   against its net basis tax for the full  
14                   amount of the tax paid to such other for-  
15                   eign country.

16           “(C) DEALER.—For purposes of subpara-  
17           graph (A), the term ‘dealer’ means—

18                   “(i) with respect to a security, any  
19                   person to whom paragraphs (1) and (2) of  
20                   subsection (k) would not apply by reason  
21                   of paragraph (4) thereof if such security  
22                   were stock, and

23                   “(ii) with respect to any other prop-  
24                   erty, any person with respect to whom

1           such property is described in section  
2           1221(a)(1).

3           “(D) REGULATIONS.—The Secretary may  
4           prescribe such regulations as may be appro-  
5           priate to carry out this paragraph, including  
6           regulations to prevent the abuse of the excep-  
7           tion provided by this paragraph and to treat  
8           other taxes as qualified taxes.

9           “(3) EXCEPTIONS.—The Secretary may by reg-  
10          ulation provide that paragraph (1) shall not apply to  
11          property where the Secretary determines that the  
12          application of paragraph (1) to such property is not  
13          necessary to carry out the purposes of this sub-  
14          section.

15          “(4) CERTAIN RULES TO APPLY.—Rules similar  
16          to the rules of paragraphs (5), (6), and (7) of sub-  
17          section (k) shall apply for purposes of this sub-  
18          section.

19          “(5) DETERMINATION OF HOLDING PERIOD.—  
20          Holding periods shall be determined for purposes of  
21          this subsection without regard to section 1235 or  
22          any similar rule.”.

23          (b) CONFORMING AMENDMENT.—The heading of  
24          subsection (k) of section 901 is amended by inserting “ON  
25          DIVIDENDS” after “TAXES”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to amounts paid or accrued more  
3 than 30 days after the date of the enactment of this Act.

4 **SEC. 357. QUALIFIED TAX COLLECTION CONTRACTS.**

5 (a) CONTRACT REQUIREMENTS.—

6 (1) IN GENERAL.—Subchapter A of chapter 64  
7 (relating to collection) is amended by adding at the  
8 end the following new section:

9 **“SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.**

10 “(a) IN GENERAL.—Nothing in any provision of law  
11 shall be construed to prevent the Secretary from entering  
12 into a qualified tax collection contract.

13 “(b) QUALIFIED TAX COLLECTION CONTRACT.—For  
14 purposes of this section, the term ‘qualified tax collection  
15 contract’ means any contract which—

16 “(1) is for the services of any person (other  
17 than an officer or employee of the Treasury Depart-  
18 ment) to locate and contact any taxpayer specified  
19 by the Secretary, to request payment from such tax-  
20 payer of an amount of Federal tax specified by the  
21 Secretary, and to obtain financial information speci-  
22 fied by the Secretary with respect to such taxpayer,  
23 and

24 “(2) prohibits each person providing such serv-  
25 ices under such contract from committing any act or

1       omission which employees of the Internal Revenue  
2       Service are prohibited from committing in the per-  
3       formance of similar services.

4       “(c) FEES.—The Secretary may retain and use an  
5       amount not in excess of 25 percent of the amount collected  
6       under any qualified tax collection contract for the costs  
7       of services performed under such contract. The Secretary  
8       shall keep adequate records regarding amounts so retained  
9       and used. The amount credited as paid by any taxpayer  
10      shall be determined without regard to this subsection.

11      “(d) NO FEDERAL LIABILITY.—The United States  
12      shall not be liable for any act or omission of any person  
13      performing services under a qualified tax collection con-  
14      tract.

15      “(e) APPLICATION OF FAIR DEBT COLLECTION  
16      PRACTICES ACT.—The provisions of the Fair Debt Collec-  
17      tion Practices Act (15 U.S.C. 1692 et seq.) shall apply  
18      to any qualified tax collection contract, except to the ex-  
19      tent superseded by any provision of this title.

20      “(f) CROSS REFERENCES.—

21             “(1) For damages for certain unauthorized col-  
22      lection actions by persons performing services under  
23      a qualified tax collection contract, see section  
24      7433A.

1           “(2) For application of Taxpayer Assistance  
2       Orders to persons performing services under a quali-  
3       fied tax collection contract, see section 7811(a)(4).”.

4           (2) CONFORMING AMENDMENTS.—

5               (A) Section 7809(a) is amended by insert-  
6       ing “6306,” before “7651”.

7               (B) The table of sections for subchapter A  
8       of chapter 64 is amended by adding at the end  
9       the following new item:

          “Sec. 6306. Qualified Tax Collection Contracts.”.

10       (b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED  
11       COLLECTION ACTIONS BY PERSONS PERFORMING SERV-  
12       ICES UNDER QUALIFIED TAX COLLECTION CON-  
13       TRACTS.—

14           (1) IN GENERAL.—Subchapter B of chapter 76  
15       (relating to proceedings by taxpayers and third par-  
16       ties) is amended by inserting after section 7433 the  
17       following new section:

18       **“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHOR-**  
19               **IZED COLLECTION ACTIONS BY PERSONS**  
20               **PERFORMING SERVICES UNDER QUALIFIED**  
21               **TAX COLLECTION CONTRACTS.**

22       “(a) IN GENERAL.—Subject to the modifications pro-  
23       vided by subsection (b), section 7433 shall apply to the  
24       acts and omissions of any person performing services  
25       under a qualified tax collection contract (as defined in sec-



tion 6306(b)) to the same extent and in the same manner as if such person were an employee of the Internal Revenue Service.

“(b) MODIFICATIONS.—For purposes of subsection (a)—

“(1) Any civil action brought under section 7433 by reason of this section shall be brought against the person who entered into the qualified tax collection contract with the Secretary and shall not be brought against the United States.

“(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

“(3) Such civil action shall not be an exclusive remedy with respect to such person.

“(4) Subsections (c) and (d)(1) of section 7433 shall not apply.”.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by inserting after the item relating to section 7433 the following new item:

“Sec. 7433A. Civil damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract.”.

(c) APPLICATION OF TAXPAYER ASSISTANCE ORDERS TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Section 7811

1 (relating to taxpayer assistance orders) is amended by  
2 adding at the end the following new subsection:

3 “(g) APPLICATION TO PERSONS PERFORMING SERV-  
4 ICES UNDER A QUALIFIED TAX COLLECTION CON-  
5 TRACT.—Any order issued or action taken by the National  
6 Taxpayer Advocate pursuant to this section shall apply to  
7 persons performing services under a qualified tax collec-  
8 tion contract (as defined in section 6306(b)) to the same  
9 extent and in the same manner as such order or action  
10 applies to the Secretary.”.

11 (d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT  
12 MISCONDUCT TO PERFORM UNDER CONTRACT.—Section  
13 1203 of the Internal Revenue Service Restructuring Act  
14 of 1998 (relating to termination of employment for mis-  
15 conduct) is amended by adding at the end the following  
16 new subsection:

17 “(e) INDIVIDUALS PERFORMING SERVICES UNDER A  
18 QUALIFIED TAX COLLECTION CONTRACT.— An individual  
19 shall cease to be permitted to perform any services under  
20 any qualified tax collection contract (as defined in section  
21 6306(b) of the Internal Revenue Code of 1986) if there  
22 is a final determination by the Secretary of the Treasury  
23 under such contract that such individual committed any  
24 act or omission described under subsection (b) in connec-  
25 tion with the performance of such services.”.

1 (e) EFFECTIVE DATE.—The amendments made to  
2 this section shall take effect on the date of the enactment  
3 of this Act.

4 **SEC. 358. EXTENSION OF CUSTOMS USER FEES.**

5 Section 13031(j)(3) of the Consolidated Omnibus  
6 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3))  
7 is amended by striking “September 30, 2003” and insert-  
8 ing “September 30, 2013”.

9 **SEC. 359. CLARIFICATION OF EXEMPTION FROM TAX FOR**  
10 **SMALL PROPERTY AND CASUALTY INSUR-**  
11 **ANCE COMPANIES.**

12 (a) IN GENERAL.—Section 501(c)(15)(A) is amended  
13 to read as follows:

14 “(A) Insurance companies or associations  
15 other than life (including interinsurers and re-  
16 ciprocal underwriters) if—

17 “(i) the gross receipts for the taxable  
18 year do not exceed \$600,000, and

19 “(ii) more than 50 percent of such  
20 gross receipts consist of premiums.”.

21 (b) CONTROLLED GROUP RULE.—Section  
22 501(c)(15)(C) is amended by inserting “, except that in  
23 applying section 1563 for purposes of section  
24 831(b)(2)(B)(ii), subparagraphs (B) and (C) of section

1 1563(b)(2) shall be disregarded” before the period at the  
2 end.

3 (c) CONFORMING AMENDMENT.—Clause (i) of sec-  
4 tion 831(b)(2)(A) is amended by striking “exceed  
5 \$350,000 but”.

6 (d) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to taxable years beginning after  
8 December 31, 2003.

9 **SEC. 360. PARTIAL PAYMENT OF TAX LIABILITY IN IN-**  
10 **STALLMENT AGREEMENTS.**

11 (a) IN GENERAL.—

12 (1) Section 6159(a) (relating to authorization  
13 of agreements) is amended—

14 (A) by striking “satisfy liability for pay-  
15 ment of” and inserting “make payment on”,  
16 and

17 (B) by inserting “full or partial” after “fa-  
18 cilitate”.

19 (2) Section 6159(c) (relating to Secretary re-  
20 quired to enter into installment agreements in cer-  
21 tain cases) is amended in the matter preceding para-  
22 graph (1) by inserting “full” before “payment”.

23 (b) REQUIREMENT TO REVIEW PARTIAL PAYMENT  
24 AGREEMENTS EVERY TWO YEARS.—Section 6159 is  
25 amended by redesignating subsections (d) and (e) as sub-

1 sections (e) and (f), respectively, and inserting after sub-  
2 section (c) the following new subsection:

3 “(d) SECRETARY REQUIRED TO REVIEW INSTALL-  
4 MENT AGREEMENTS FOR PARTIAL COLLECTION EVERY  
5 TWO YEARS.—In the case of an agreement entered into  
6 by the Secretary under subsection (a) for partial collection  
7 of a tax liability, the Secretary shall review the agreement  
8 at least once every 2 years.”.

9 (c) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to agreements entered into on or  
11 after the date of the enactment of this Act.

12 **SEC. 361. EXTENSION OF AMORTIZATION OF INTANGIBLES**  
13 **TO SPORTS FRANCHISES.**

14 (a) IN GENERAL.—Section 197(e) (relating to excep-  
15 tions to definition of section 197 intangible) is amended  
16 by striking paragraph (6) and by redesignating para-  
17 graphs (7) and (8) as paragraphs (6) and (7), respectively.

18 (b) CONFORMING AMENDMENTS.—

19 (1)(A) Section 1056 (relating to basis limitation  
20 for player contracts transferred in connection with  
21 the sale of a franchise) is repealed.

22 (B) The table of sections for part IV of sub-  
23 chapter O of chapter 1 is amended by striking the  
24 item relating to section 1056.

1           (2) Section 1253 (relating to transfers of fran-  
2           chises, trademarks, and trade names) is amended by  
3           striking subsection (e).

4           (c) EFFECTIVE DATE.—The amendments made by  
5           this section shall apply to property acquired after the date  
6           of the enactment of this Act.

7   **SEC. 362. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**  
8                           **TEREST ON POTENTIAL UNDERPAYMENTS.**

9           (a) IN GENERAL.—Subchapter A of chapter 67 (re-  
10          lating to interest on underpayments) is amended by add-  
11          ing at the end the following new section:

12   **“SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**  
13                           **TEREST ON POTENTIAL UNDERPAYMENTS,**  
14                           **ETC.**

15          “(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN  
16          AS PAYMENT OF TAX.—A taxpayer may make a cash de-  
17          posit with the Secretary which may be used by the Sec-  
18          retary to pay any tax imposed under subtitle A or B or  
19          chapter 41, 42, 43, or 44 which has not been assessed  
20          at the time of the deposit. Such a deposit shall be made  
21          in such manner as the Secretary shall prescribe.

22          “(b) NO INTEREST IMPOSED.—To the extent that  
23          such deposit is used by the Secretary to pay tax, for pur-  
24          poses of section 6601 (relating to interest on underpay-

1 ments), the tax shall be treated as paid when the deposit  
2 is made.

3 “(c) RETURN OF DEPOSIT.—Except in a case where  
4 the Secretary determines that collection of tax is in jeop-  
5 ardy, the Secretary shall return to the taxpayer any  
6 amount of the deposit (to the extent not used for a pay-  
7 ment of tax) which the taxpayer requests in writing.

8 “(d) PAYMENT OF INTEREST.—

9 “(1) IN GENERAL.—For purposes of section  
10 6611 (relating to interest on overpayments), a de-  
11 posit which is returned to a taxpayer shall be treated  
12 as a payment of tax for any period to the extent  
13 (and only to the extent) attributable to a disputable  
14 tax for such period. Under regulations prescribed by  
15 the Secretary, rules similar to the rules of section  
16 6611(b)(2) shall apply.

17 “(2) DISPUTABLE TAX.—

18 “(A) IN GENERAL.—For purposes of this  
19 section, the term ‘disputable tax’ means the  
20 amount of tax specified at the time of the de-  
21 posit as the taxpayer’s reasonable estimate of  
22 the maximum amount of any tax attributable to  
23 disputable items.

24 “(B) SAFE HARBOR BASED ON 30-DAY  
25 LETTER.—In the case of a taxpayer who has

1           been issued a 30-day letter, the maximum  
2           amount of tax under subparagraph (A) shall  
3           not be less than the amount of the proposed de-  
4           ficiency specified in such letter.

5           “(3) OTHER DEFINITIONS.—For purposes of  
6           paragraph (2)—

7                   “(A) DISPUTABLE ITEM.—The term ‘dis-  
8                   putable item’ means any item of income, gain,  
9                   loss, deduction, or credit if the taxpayer—

10                           “(i) has a reasonable basis for its  
11                           treatment of such item, and

12                           “(ii) reasonably believes that the Sec-  
13                           retary also has a reasonable basis for dis-  
14                           allowing the taxpayer’s treatment of such  
15                           item.

16                   “(B) 30-DAY LETTER.—The term ‘30-day  
17                   letter’ means the first letter of proposed defi-  
18                   ciency which allows the taxpayer an opportunity  
19                   for administrative review in the Internal Rev-  
20                   enue Service Office of Appeals.

21           “(4) RATE OF INTEREST.—The rate of interest  
22           allowable under this subsection shall be the Federal  
23           short-term rate determined under section 6621(b),  
24           compounded daily.

25           “(e) USE OF DEPOSITS.—



1           “(1) PAYMENT OF TAX.—Except as otherwise  
2           provided by the taxpayer, deposits shall be treated  
3           as used for the payment of tax in the order depos-  
4           ited.

5           “(2) RETURNS OF DEPOSITS.—Deposits shall  
6           be treated as returned to the taxpayer on a last-in,  
7           first-out basis.”.

8           (b) CLERICAL AMENDMENT.—The table of sections  
9           for subchapter A of chapter 67 is amended by adding at  
10          the end the following new item:

                  “Sec. 6603. Deposits made to suspend running of interest on po-  
                  tential underpayments, etc.”.

11          (c) EFFECTIVE DATE.—

12           (1) IN GENERAL.—The amendments made by  
13           this section shall apply to deposits made after the  
14           date of the enactment of this Act.

15           (2) COORDINATION WITH DEPOSITS MADE  
16           UNDER REVENUE PROCEDURE 84–58.—In the case of  
17           an amount held by the Secretary of the Treasury or  
18           his delegate on the date of the enactment of this Act  
19           as a deposit in the nature of a cash bond deposit  
20           pursuant to Revenue Procedure 84–58, the date that  
21           the taxpayer identifies such amount as a deposit  
22           made pursuant to section 6603 of the Internal Rev-  
23           enue Code (as added by this Act) shall be treated as

1 the date such amount is deposited for purposes of  
2 such section 6603.

3 **SEC. 363. CLARIFICATION OF RULES FOR PAYMENT OF ES-**  
4 **TIMATED TAX FOR CERTAIN DEEMED ASSET**  
5 **SALES.**

6 (a) IN GENERAL.—Paragraph (13) of section 338(h)  
7 (relating to tax on deemed sale not taken into account for  
8 estimated tax purposes) is amended by adding at the end  
9 the following: “The preceding sentence shall not apply  
10 with respect to a qualified stock purchase for which an  
11 election is made under paragraph (10).”.

12 (b) EFFECTIVE DATE.—The amendment made by  
13 subsection (a) shall apply to transactions occurring after  
14 the date of the enactment of this Act.

15 **SEC. 364. LIMITATION OF DEDUCTION FOR CHARITABLE**  
16 **CONTRIBUTIONS OF PATENTS AND SIMILAR**  
17 **PROPERTY.**

18 (a) IN GENERAL.—Section 170(e)(1)(B) (relating to  
19 certain contributions of ordinary income and capital gain  
20 property) is amended by striking “or” at the end of clause  
21 (i), by adding “or” at the end of clause (ii), and by insert-  
22 ing after clause (ii) the following new clause:

23 “(iii) of any patent, copyright, trade-  
24 mark, trade name, trade secret, know-how,

1 software, or similar property, or applica-  
2 tions or registrations of such property,”.

3 (b) ANTI-ABUSE RULES.—The Secretary of the  
4 Treasury may prescribe such regulations or other adminis-  
5 trative guidance as may be necessary or appropriate to  
6 prevent the avoidance of the purposes of section  
7 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986  
8 (as added by subsection (a)), including preventing—

9 (1) the circumvention of the reduction of the  
10 charitable deduction by embedding or bundling the  
11 patent or similar property as part of a charitable  
12 contribution of property that includes the patent or  
13 similar property,

14 (2) the manipulation of the basis of the prop-  
15 erty to increase the amount of the charitable deduc-  
16 tion through the use of related persons, pass-thru  
17 entities, or other intermediaries, or through the use  
18 of any provision of law or regulation (including the  
19 consolidated return regulations), and

20 (3) a donor from changing the form of the pat-  
21 ent or similar property to property of a form for  
22 which different deduction rules would apply.

23 (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to contributions made after May  
25 7, 2003.

1 **SEC. 365. EXTENSION OF TRANSFERS OF EXCESS PENSION**

2 **ASSETS TO RETIREE HEALTH ACCOUNTS.**

3 (a) AMENDMENT OF INTERNAL REVENUE CODE OF  
4 1986.—Paragraph (5) of section 420(b) (relating to expi-  
5 ration) is amended by striking “December 31, 2005” and  
6 inserting “December 31, 2013”.

7 (b) AMENDMENTS OF ERISA.—

8 (1) Section 101(e)(3) of the Employee Retire-  
9 ment Income Security Act of 1974 (29 U.S.C.  
10 1021(e)(3)) is amended by striking “Tax Relief Ex-  
11 tension Act of 1999” and inserting “Jobs and  
12 Growth Tax Relief Reconciliation Act of 2003”.

13 (2) Section 403(c)(1) of such Act (29 U.S.C.  
14 1103(c)(1)) is amended by striking “Tax Relief Ex-  
15 tension Act of 1999” and inserting “Jobs and  
16 Growth Tax Relief Reconciliation Act of 2003”.

17 (3) Paragraph (13) of section 408(b) of such  
18 Act (29 U.S.C. 1108(b)(3)) is amended—

19 (A) by striking “January 1, 2006” and in-  
20 serting “January 1, 2014”, and

21 (B) by striking “Tax Relief Extension Act  
22 of 1999” and inserting “Jobs and Growth Tax  
23 Relief Reconciliation Act of 2003”.

1 **SEC. 366. PRORATION RULES FOR LIFE INSURANCE BUSI-**  
2 **NESS OF PROPERTY AND CASUALTY INSUR-**  
3 **ANCE COMPANIES.**

4 (a) IN GENERAL.—Section 832(b)(4) (defining pre-  
5 miums earned) is amended—

6 (1) by inserting “, except that any deduction  
7 attributable to such reserves shall be reduced in the  
8 same manner as the deductions provided by sections  
9 243, 244, and 245 for a life insurance company are  
10 reduced under section 805(a)(4)” before the period  
11 at the end of the first sentence following subpara-  
12 graph (C), and

13 (2) by adding at the end the following new sen-  
14 tence: “In applying section 812(d) for purposes of  
15 the reduction under the third preceding sentence,  
16 only gross investment income attributable to the re-  
17 serves described in such sentence shall be taken into  
18 account.”.

19 (b) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to taxable years beginning after  
21 December 31, 2003.

22 **SEC. 367. MODIFICATION OF TREATMENT OF TRANSFERS**  
23 **TO CREDITORS IN DIVISIVE REORGANIZA-**  
24 **TIONS.**

25 (a) IN GENERAL.—Section 361(b)(3) (relating to  
26 treatment of transfers to creditors) is amended by adding

1 at the end the following new sentence: “In the case of a  
2 reorganization described in section 368(a)(1)(D) with re-  
3 spect to which stock or securities of the corporation to  
4 which the assets are transferred are distributed in a trans-  
5 action which qualifies under section 355, this paragraph  
6 shall apply only to the extent that the money or other  
7 property transferred to such creditors does not exceed the  
8 adjusted bases of such assets transferred.”.

9 (b) LIABILITIES IN EXCESS OF BASIS.—Section  
10 357(c)(1)(B) is amended by inserting “with respect to  
11 which stock or securities of the corporation to which the  
12 assets are transferred are distributed in a transaction  
13 which qualifies under section 355” after “section  
14 368(a)(1)(D)”.

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to transfers of money or other  
17 property, or liabilities assumed, in connection with a reor-  
18 ganization occurring on or after the date of the enactment  
19 of this Act.

## 20 **Subtitle F—Other Provisions**

### 21 **SEC. 371. TEMPORARY STATE FISCAL RELIEF FUND.**

22 (a) AUTHORITY TO MAKE PAYMENTS TO STATES.—

23 (1) IN GENERAL.—Not later than 45 days after  
24 the date of enactment of this Act, the Secretary of  
25 the Treasury (in this section referred to as the “Sec-

1       retary'') shall establish a program under which the  
2       Secretary shall make a payment to each State in  
3       which the chief executive officer of the State, or the  
4       chief executive officer's designee, in consultation and  
5       coordination with other State and local officials, no-  
6       tifies the Secretary not later than 6 months after  
7       the date of enactment of this Act that the State in-  
8       tends to use the payment in accordance with this  
9       section.

10       (2) REQUIREMENT.—In making payments to  
11       States under this section, the Secretary shall ensure  
12       that not more than 50 percent of the aggregate  
13       amount made available for payments under this sec-  
14       tion (after the application of section 1903(x)(3) of  
15       the Social Security Act) is paid to States in fiscal  
16       year 2003.

17       (b) USE OF PAYMENT.—

18       (1) IN GENERAL.—Subject to paragraph (2), a  
19       State shall use the funds provided under a payment  
20       made under this section to carry out 1 or more of  
21       the following activities:

22               (A) Improving education or job training.

23               (B) Improving health care services.

24               (C) Improving transportation or other in-  
25       frastructure.

1 (D) Improving law enforcement or public  
2 safety.

3 (E) Maintaining essential government serv-  
4 ices.

5 (2) LIMITATION.—A State may only use funds  
6 provided under a payment made under this section  
7 for types of expenditures permitted under the most  
8 recently approved budget for the State.

9 (c) CERTIFICATIONS.—In order to receive a payment  
10 under this section, the State shall provide the Secretary  
11 with certifications that—

12 (1) the State's proposed uses of the funds are  
13 consistent with subsection (b); and

14 (2) the State will allocate 50 percent of the  
15 funds directly to units of general local government  
16 based on the relative local population proportion for  
17 the State (as defined in subsection (d)(5)).

18 (d) AMOUNT OF PAYMENT.—

19 (1) IN GENERAL.—The amount of payment  
20 made to a State under this section shall be the min-  
21 imum payment amount described in paragraph (2)  
22 plus the relative population proportion amount de-  
23 scribed in paragraph (3).



1           (2) MINIMUM PAYMENT AMOUNT.—The min-  
2       imum payment amount described in this paragraph  
3       is—

4           (A) in the case of any of the several States  
5       or the District of Columbia, one-half of 1 per-  
6       cent of the aggregate amount made available  
7       for payments under this section (after the ap-  
8       plication of section 1903(x)(3) of the Social Se-  
9       curity Act); and

10          (B) in the case of the Commonwealth of  
11       Puerto Rico, the United States Virgin Islands,  
12       Guam, the Commonwealth of the Northern  
13       Mariana Islands, or American Samoa, one-tenth  
14       of 1 percent of such aggregate amount (after  
15       the application of section 1903(x)(3) of the So-  
16       cial Security Act).

17          (3) RELATIVE POPULATION PROPORTION  
18       AMOUNT.—The relative population proportion  
19       amount described in this paragraph is the product  
20       of—

21          (A) the aggregate amount made available  
22       for payments under this section (after the ap-  
23       plication of section 1903(x)(3) of the Social Se-  
24       curity Act) minus the total of all of the min-

1           imum payment amounts determined under  
2           paragraph (2); and

3           (B) the relative State population propor-  
4           tion (as defined in paragraph (4)).

5           (4) RELATIVE STATE POPULATION PROPORTION  
6           DEFINED.—In this section, the term “relative State  
7           population proportion” means, with respect to a  
8           State, the amount equal to the quotient of—

9           (A) the population of the State (as re-  
10          ported in the most recent decennial census);  
11          and

12          (B) the total population of all States (as  
13          reported in the most recent decennial census).

14          (5) RELATIVE LOCAL POPULATION PROPORTION  
15          DEFINED.—In this section, the term “relative local  
16          population proportion” means, with respect to a unit  
17          of general local government within a State, the  
18          amount equal to the quotient of—

19          (A) the population of such unit of general  
20          local government (as reported in the most re-  
21          cent decennial census); and

22          (B) the total population of the State (as  
23          reported in the most recent decennial census).

24          (e) APPROPRIATION.—There is authorized to be ap-  
25          propriated and is appropriated for making payments

1 under this section, \$20,000,000,000 for fiscal year 2003.  
2 Amounts appropriated under this subsection shall remain  
3 available for expenditure through December 31, 2004.

4 (f) INCREASED PAYMENTS TO STATES UNDER THE  
5 MEDICAID PROGRAM.—Section 1903 of the Social Secu-  
6 rity Act (42 U.S.C. 1396b) is amended by adding at the  
7 end the following:

8 “(x) TEMPORARY INCREASED PAYMENTS TO  
9 STATES.—

10 “(1) IN GENERAL.—From the amounts made  
11 available under paragraph (3), the Secretary shall  
12 increase payments to States under this section for  
13 the third and fourth calendar quarters of fiscal year  
14 2003, each calendar quarter of fiscal year 2004, and  
15 the first calendar quarter of fiscal year 2005.

16 “(2) METHOD OF INCREASE.—The Secretary  
17 shall determine the appropriate method for increas-  
18 ing payments to States in accordance with this sub-  
19 section.

20 “(3) FUNDING.—Notwithstanding section  
21 371(e) of the Jobs and Growth Tax Relief Reconcili-  
22 ation Act of 2003, from the amounts appropriated  
23 in such section for fiscal year 2003, \$499,999 of  
24 such amount is hereby transferred and made avail-  
25 able for the purpose of increasing payments to

1 States under this section in accordance with this  
2 subsection. Amounts transferred under this para-  
3 graph shall remain available for expenditure through  
4 December 31, 2004.”.

5 (g) REPEAL.—Effective as of January 1, 2005, this  
6 section and the amendments made by this section are re-  
7 pealed.

8 **SEC. 372. REVIEW OF STATE AGENCY BLINDNESS AND DIS-**  
9 **ABILITY DETERMINATIONS.**

10 Section 1633 of the Social Security Act (42 U.S.C.  
11 1383b) is amended by adding at the end the following:

12 “(e)(1) The Commissioner of Social Security shall re-  
13 view determinations, made by State agencies pursuant to  
14 subsection (a) in connection with applications for benefits  
15 under this title on the basis of blindness or disability, that  
16 individuals who have attained 18 years of age are blind  
17 or disabled as of a specified onset date. The Commissioner  
18 of Social Security shall review such a determination before  
19 any action is taken to implement the determination.

20 “(2)(A) In carrying out paragraph (1), the Commis-  
21 sioner of Social Security shall review—

22 “(i) at least 25 percent of all determinations re-  
23 ferred to in paragraph (1) that are made in fiscal  
24 year 2004; and

1           “(ii) at least 50 percent of all such determina-  
2           tions that are made in fiscal year 2005 or thereafter.

3           “(B) In carrying out subparagraph (A), the Commis-  
4           sioner of Social Security shall, to the extent feasible, select  
5           for review the determinations which the Commissioner of  
6           Social Security identifies as being the most likely to be  
7           incorrect.”.

8   **SEC. 373. PROHIBITION ON USE OF SCHIP FUNDS TO PRO-**  
9                           **VIDE COVERAGE FOR CHILDLESS ADULTS.**

10          (a) GENERAL LIMITATIONS ON PAYMENTS.—Section  
11   2105(c)(1) of the Social Security Act (42 U.S.C.  
12   1397ee(c)(1)) is amended by inserting before the period  
13   the following: “and may not include coverage of a childless  
14   adult unless the childless adult is a pregnant woman. For  
15   purposes of the preceding sentence, a caretaker relative  
16   (as such term is defined for purposes of carrying out sec-  
17   tion 1931) shall not be considered a childless adult.”.

18          (b) LIMITATION ON WAIVER AUTHORITY.—Section  
19   2107 of the Social Security Act (42 U.S.C. 1397gg) is  
20   amended by adding at the end the following:

21          “(f) LIMITATION OF WAIVER AUTHORITY.—Notwith-  
22   standing subsection (e)(2)(A) and section 1115(a), the  
23   Secretary may not approve a waiver, experimental, pilot,  
24   or demonstration project, or an amendment to such a  
25   project that has been approved as of the date of enactment

1 of this subsection, that would allow funds made available  
2 under this title to be used to provide child health assist-  
3 ance or other health benefits coverage to a childless adult,  
4 other than a childless adult who is a pregnant woman. For  
5 purposes of the preceding sentence, a caretaker relative  
6 (as such term is defined for purposes of carrying out sec-  
7 tion 1931) shall not be considered a childless adult.”.

8 (c) EFFECTIVE DATE.—The amendments made by  
9 this section take effect on the date of enactment of this  
10 Act and apply to proposals to conduct a waiver, experi-  
11 mental, pilot, or demonstration project affecting the State  
12 children’s health insurance program under title XXI of  
13 such Act, and to any proposals to amend such a project,  
14 that are approved or extended on or after such date of  
15 enactment.

16 (d) RULE OF CONSTRUCTION.—Nothing in this sec-  
17 tion or the amendments made by this section shall be con-  
18 strued to—

19 (1) authorize the waiver of any provision of title  
20 XXI of the Social Security Act (42 U.S.C. 1397aa  
21 et seq.) that is not otherwise authorized to be waived  
22 under such title or under title XI of such Act (42  
23 U.S.C. 1301 et seq.) as of the date of enactment of  
24 this Act; or

1           (2) imply congressional approval of any waiver,  
2           experimental, pilot, or demonstration project affect-  
3           ing the State children’s health insurance program  
4           under title XXI of such Act that has been approved  
5           as of such date of enactment.

6   **TITLE IV—SMALL BUSINESS AND**  
7   **AGRICULTURAL PROVISIONS**  
8       **Subtitle A—Small Business**  
9       **Provisions**

10 **SEC. 401. EXCLUSION OF CERTAIN INDEBTEDNESS OF**  
11           **SMALL BUSINESS INVESTMENT COMPANIES**  
12           **FROM ACQUISITION INDEBTEDNESS.**

13           (a) IN GENERAL.—Section 514(c) (relating to acqui-  
14           sition indebtedness) is amended by adding at the end the  
15           following new paragraph:

16                   “(10) CERTAIN INDEBTEDNESS OF SMALL  
17           BUSINESS INVESTMENT COMPANIES.—For purposes  
18           of this section, the term ‘acquisition indebtedness’  
19           does not include any indebtedness incurred by a  
20           small business investment company licensed under  
21           the Small Business Investment Act of 1958 which is  
22           evidenced by a debenture—

23                   “(A) issued by such company under section  
24           303(a) of such Act, or

1                   “(B) held or guaranteed by the Small  
2                   Business Administration.”.

3           (b) **EFFECTIVE DATE.**—The amendment made by  
4 this section shall apply to any indebtedness incurred after  
5 December 31, 2002, by a small business investment com-  
6 pany described in section 514(c)(10) of the Internal Rev-  
7 enue Code of 1986 (as added by this section) with respect  
8 to property acquired by such company after such date.

9   **SEC. 402. REPEAL OF OCCUPATIONAL TAXES RELATING TO**  
10                   **DISTILLED SPIRITS, WINE, AND BEER.**

11           (a) **REPEAL OF OCCUPATIONAL TAXES.**—

12                   (1) **IN GENERAL.**—The following provisions of  
13 part II of subchapter A of chapter 51 (relating to  
14 occupational taxes) are hereby repealed:

15                   (A) Subpart A (relating to proprietors of  
16 distilled spirits plants, bonded wine cellars,  
17 etc.).

18                   (B) Subpart B (relating to brewer).

19                   (C) Subpart D (relating to wholesale deal-  
20 ers) (other than sections 5114 and 5116).

21                   (D) Subpart E (relating to retail dealers)  
22 (other than section 5124).

23                   (E) Subpart G (relating to general provi-  
24 sions) (other than sections 5142, 5143, 5145,  
25 and 5146).



1           (2) NONBEVERAGE DOMESTIC DRAWBACK.—  
2       Section 5131 is amended by striking “, on payment  
3       of a special tax per annum,”.

4           (3) INDUSTRIAL USE OF DISTILLED SPIRITS.—  
5       Section 5276 is hereby repealed.

6       (b) CONFORMING AMENDMENTS.—

7           (1)(A) The heading for part II of subchapter A  
8       of chapter 51 and the table of subparts for such  
9       part are amended to read as follows:

10       **“PART II—MISCELLANEOUS PROVISIONS**

          “Subpart A. Manufacturers of stills.

          “Subpart B. Nonbeverage domestic drawback claimants.

          “Subpart C. Recordkeeping by dealers.

          “Subpart D. Other provisions.”.

11           (B) The table of parts for such subchapter A  
12       is amended by striking the item relating to part II  
13       and inserting the following new item:

          “Part II. Miscellaneous provisions.”.

14           (2) Subpart C of part II of such subchapter  
15       (relating to manufacturers of stills) is redesignated  
16       as subpart A.

17           (3)(A) Subpart F of such part II (relating to  
18       nonbeverage domestic drawback claimants) is reded-  
19       ignated as subpart B and sections 5131 through  
20       5134 are redesignated as sections 5111 through  
21       5114, respectively.

1 (B) The table of sections for such subpart B,  
2 as so redesignated, is amended—

3 (i) by redesignating the items relating to  
4 sections 5131 through 5134 as relating to sec-  
5 tions 5111 through 5114, respectively, and

6 (ii) by striking “and rate of tax” in the  
7 item relating to section 5111, as so redesign-  
8 nated.

9 (C) Section 5111, as redesignated by subpara-  
10 graph (A), is amended—

11 (i) by striking “**AND RATE OF TAX**” in  
12 the section heading,

13 (ii) by striking the subsection heading for  
14 subsection (a), and

15 (iii) by striking subsection (b).

16 (4) Part II of subchapter A of chapter 51 is  
17 amended by adding after subpart B, as redesignated  
18 by paragraph (3), the following new subpart:

19 **“Subpart C—Recordkeeping by Dealers**

“Sec. 5121. Recordkeeping by wholesale dealers.

“Sec. 5122. Recordkeeping by retail dealers.

“Sec. 5123. Preservation and inspection of records, and entry of  
premises for inspection.”.

20 (5)(A) Section 5114 (relating to records) is  
21 moved to subpart C of such part II and inserted  
22 after the table of sections for such subpart.

23 (B) Section 5114 is amended—

1 (i) by striking the section heading and in-  
2 serting the following new heading:

3 **“SEC. 5121. RECORDKEEPING BY WHOLESALE DEALERS.”,**

4 and

5 (ii) by redesignating subsection (c) as sub-  
6 section (d) and by inserting after subsection (b)  
7 the following new subsection:

8 “(c) WHOLESALE DEALERS.—For purposes of this  
9 part—

10 “(1) WHOLESALE DEALER IN LIQUORS.—The  
11 term ‘wholesale dealer in liquors’ means any dealer  
12 (other than a wholesale dealer in beer) who sells, or  
13 offers for sale, distilled spirits, wines, or beer, to an-  
14 other dealer.

15 “(2) WHOLESALE DEALER IN BEER.—The term  
16 ‘wholesale dealer in beer’ means any dealer who  
17 sells, or offers for sale, beer, but not distilled spirits  
18 or wines, to another dealer.

19 “(3) DEALER.—The term ‘dealer’ means any  
20 person who sells, or offers for sale, any distilled spir-  
21 its, wines, or beer.

22 “(4) PRESUMPTION IN CASE OF SALE OF 20  
23 WINE GALLONS OR MORE.—The sale, or offer for  
24 sale, of distilled spirits, wines, or beer, in quantities  
25 of 20 wine gallons or more to the same person at

1 the same time, shall be presumptive evidence that  
2 the person making such sale, or offer for sale, is en-  
3 gaged in or carrying on the business of a wholesale  
4 dealer in liquors or a wholesale dealer in beer, as the  
5 case may be. Such presumption may be overcome by  
6 evidence satisfactorily showing that such sale, or  
7 offer for sale, was made to a person other than a  
8 dealer.”.

9 (C) Paragraph (3) of section 5121(d), as so re-  
10 designated, is amended by striking “section 5146”  
11 and inserting “section 5123”.

12 (6)(A) Section 5124 (relating to records) is  
13 moved to subpart C of part II of subchapter A of  
14 chapter 51 and inserted after section 5121.

15 (B) Section 5124 is amended—

16 (i) by striking the section heading and in-  
17 serting the following new heading:

18 **“SEC. 5122. RECORDKEEPING BY RETAIL DEALERS.”,**

19 (ii) by striking “section 5146” in sub-  
20 section (c) and inserting “section 5123”, and

21 (iii) by redesignating subsection (c) as sub-  
22 section (d) and inserting after subsection (b)  
23 the following new subsection:

24 “(c) RETAIL DEALERS.—For purposes of this  
25 section—

1           “(1) RETAIL DEALER IN LIQUORS.—The term  
2           ‘retail dealer in liquors’ means any dealer (other  
3           than a retail dealer in beer) who sells, or offers for  
4           sale, distilled spirits, wines, or beer, to any person  
5           other than a dealer.

6           “(2) RETAIL DEALER IN BEER.—The term ‘re-  
7           tail dealer in beer’ means any dealer who sells, or of-  
8           fers for sale, beer, but not distilled spirits or wines,  
9           to any person other than a dealer.

10          “(3) DEALER.—The term ‘dealer’ has the  
11          meaning given such term by section 5121(c)(3).”.

12          (7) Section 5146 is moved to subpart C of part  
13          II of subchapter A of chapter 51, inserted after sec-  
14          tion 5122, and redesignated as section 5123.

15          (8) Part II of subchapter A of chapter 51 is  
16          amended by inserting after subpart C the following  
17          new subpart:

18                   **“Subpart D—Other Provisions**

                  “Sec. 5131. Packaging distilled spirits for industrial uses.  
                  “Sec. 5132. Prohibited purchases by dealers.”.

19          (9) Section 5116 is moved to subpart D of part  
20          II of subchapter A of chapter 51, inserted after the  
21          table of sections, redesignated as section 5131, and  
22          amended by inserting “(as defined in section  
23          5121(c))” after “dealer” in subsection (a).

1           (10) Subpart D of part II of subchapter A of  
2       chapter 51 is amended by adding at the end thereof  
3       the following new section:

4       **“SEC. 5132. PROHIBITED PURCHASES BY DEALERS.**

5           “(a) IN GENERAL.—Except as provided in regula-  
6       tions prescribed by the Secretary, it shall be unlawful for  
7       a dealer to purchase distilled spirits for resale from any  
8       person other than a wholesale dealer in liquors who is re-  
9       quired to keep the records prescribed by section 5121.

10          “(b) PENALTY AND FORFEITURE.—

**“For penalty and forfeiture provisions applicable  
to violations of subsection (a), see sections 5687 and  
7302.”.**

11          (11) Subsection (b) of section 5002 is  
12       amended—

13                (A) by striking “section 5112(a)” and in-  
14       serting “section 5121(c)(3)”,

15                (B) by striking “section 5112” and insert-  
16       ing “section 5121(c)”,

17                (C) by striking “section 5122” and insert-  
18       ing “section 5122(c)”.

19          (12) Subparagraph (A) of section 5010(c)(2) is  
20       amended by striking “section 5134” and inserting  
21       “section 5114”.

22          (13) Subsection (d) of section 5052 is amended  
23       to read as follows:

1       “(d) BREWER.—For purposes of this chapter, the  
2 term ‘brewer’ means any person who brews beer or pro-  
3 duces beer for sale. Such term shall not include any person  
4 who produces only beer exempt from tax under section  
5 5053(e).”.

6           (14) The text of section 5182 is amended to  
7 read as follows:

8           “For provisions requiring recordkeeping by  
9 wholesale liquor dealers, see section 5121, and by re-  
10 tail liquor dealers, see section 5122.”.

11          (15) Subsection (b) of section 5402 is amended  
12 by striking “section 5092” and inserting “section  
13 5052(d)”.

14          (16) Section 5671 is amended by striking “or  
15 5091”.

16          (17)(A) Part V of subchapter J of chapter 51  
17 is hereby repealed.

18          (B) The table of parts for such subchapter J is  
19 amended by striking the item relating to part V.

20          (18)(A) Sections 5142, 5143, and 5145 are  
21 moved to subchapter D of chapter 52, inserted after  
22 section 5731, redesignated as sections 5732, 5733,  
23 and 5734, respectively, and amended by striking  
24 “this part” each place it appears and inserting “this  
25 subchapter”.

1           (B) Section 5732, as redesignated by subpara-  
2           graph (A), is amended by striking “(except the tax  
3           imposed by section 5131)” each place it appears.

4           (C) Paragraph (2) of section 5733(c), as rededesignated by subparagraph (A), is amended by striking  
5           “liquors” both places it appears and inserting “to-  
6           bacco products and cigarette papers and tubes”.  
7

8           (D) The table of sections for subchapter D of  
9           chapter 52 is amended by adding at the end thereof  
10          the following:

          “Sec. 5732. Payment of tax.

          “Sec. 5733. Provisions relating to liability for occupational taxes.

          “Sec. 5734. Application of State laws.”.

11          (E) Section 5731 is amended by striking sub-  
12          section (c) and by redesignating subsection (d) as  
13          subsection (c).

14          (19) Subsection (c) of section 6071 is amended  
15          by striking “section 5142” and inserting “section  
16          5732”.

17          (20) Paragraph (1) of section 7652(g) is  
18          amended—

19                (A) by striking “subpart F” and inserting  
20                “subpart B”, and

21                (B) by striking “section 5131(a)” and in-  
22                serting “section 5111”.



1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect on July 1, 2003, but shall  
3 not apply to taxes imposed for periods before such date.

4 **SEC. 403. CUSTOM GUNSMITHS.**

5 (a) SMALL MANUFACTURERS EXEMPT FROM FIRE-  
6 ARMS EXCISE TAX.—Section 4182 (relating to exemp-  
7 tions) is amended by redesignating subsection (c) as sub-  
8 section (d) and by inserting after subsection (b) the fol-  
9 lowing new subsection:

10 “(c) SMALL MANUFACTURERS, ETC.—

11 “(1) IN GENERAL.—The tax imposed by section  
12 4181 shall not apply to any article described in such  
13 section if manufactured, produced, or imported by a  
14 person who manufactures, produces, and imports  
15 less than 50 of such articles during the calendar  
16 year.

17 “(2) CONTROLLED GROUPS.—All persons treat-  
18 ed as a single employer for purposes of subsection  
19 (a) or (b) of section 52 shall be treated as one per-  
20 son for purposes of paragraph (1).”.

21 (b) EFFECTIVE DATE.—

22 (1) IN GENERAL.—The amendments made by  
23 this section shall apply to articles sold by the manu-  
24 facturer, producer, or importer on or after the date  
25 which is the first day of the month beginning at

1       least 2 weeks after the date of the enactment of this  
2       Act.

3           (2) NO INFERENCE.—Nothing in the amend-  
4       ments made by this section shall be construed to  
5       create any inference with respect to the proper tax  
6       treatment of any sales before the effective date of  
7       such amendments.

8       **SEC. 404. SIMPLIFICATION OF EXCISE TAX IMPOSED ON**  
9               **BOWS AND ARROWS.**

10       (a) BOWS.—Section 4161(b)(1) (relating to bows) is  
11       amended to read as follows:

12           “(1) BOWS.—

13               “(A) IN GENERAL.—There is hereby im-  
14       posed on the sale by the manufacturer, pro-  
15       ducer, or importer of any bow which has a draw  
16       weight of 30 pounds or more, a tax equal to 11  
17       percent of the price for which so sold.

18               “(B) ARCHERY EQUIPMENT.—There is  
19       hereby imposed on the sale by the manufac-  
20       turer, producer, or importer—

21               “(i) of any part or accessory suitable  
22       for inclusion in or attachment to a bow de-  
23       scribed in subparagraph (A), and

1                   “(ii) of any quiver or broadhead suit-  
2                   able for use with an arrow described in  
3                   paragraph (3),  
4                   a tax equal to 11 percent of the price for which  
5                   so sold.”.

6           (b) ARROWS.—Section 4161(b) (relating to bows and  
7   arrows, etc.) is amended by redesignating paragraph (3)  
8   as paragraph (4) and inserting after paragraph (2) the  
9   following:

10           “(3) ARROWS.—

11                   “(A) IN GENERAL.—There is hereby im-  
12                   posed on the sale by the manufacturer, pro-  
13                   ducer, or importer of any arrow, a tax equal to  
14                   12 percent of the price for which so sold.

15                   “(B) EXCEPTION.—The tax imposed by  
16                   subparagraph (A) on an arrow shall not apply  
17                   if the arrow contains an arrow shaft subject to  
18                   the tax imposed by paragraph (2).

19                   “(C) ARROW.—For purposes of this para-  
20                   graph, the term ‘arrow’ means any shaft de-  
21                   scribed in paragraph (2) to which additional  
22                   components are attached.”.

23           (c) CONFORMING AMENDMENT.—The heading of sec-  
24   tion 4161(b)(2) (relating to arrows) is amended by strik-

1 ing “ARROWS.—” and inserting “ARROW COMPO-  
2 NENTS.—”.

3 (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to articles sold by the manufac-  
5 turer, producer, or importer after the date of the enact-  
6 ment of this Act.

## 7 **Subtitle B—Agricultural Provisions**

### 8 **SEC. 411. CAPITAL GAIN TREATMENT UNDER SECTION** 9 **631(b) TO APPLY TO OUTRIGHT SALES BY** 10 **LANDOWNERS.**

11 (a) IN GENERAL.—The first sentence of section  
12 631(b) (relating to disposal of timber with a retained eco-  
13 nomic interest) is amended by striking “retains an eco-  
14 nomic interest in such timber” and inserting “either re-  
15 tains an economic interest in such timber or makes an  
16 outright sale of such timber”.

17 (b) CONFORMING AMENDMENT.—The third sentence  
18 of section 631(b) is amended by striking “The date of dis-  
19 posal” and inserting “In the case of disposal of timber  
20 with a retained economic interest, the date of disposal”.

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to sales after the date of the enact-  
23 ment of this Act.

1 **SEC. 412. SPECIAL RULES FOR LIVESTOCK SOLD ON AC-**  
2 **COUNT OF WEATHER-RELATED CONDITIONS.**

3 (a) RULES FOR REPLACEMENT OF INVOLUNTARILY  
4 CONVERTED LIVESTOCK.—Subsection (e) of section 1033  
5 (relating to involuntary conversions) is amended—

6 (1) by striking “CONDITIONS.—For purposes”  
7 and inserting “CONDITIONS.—

8 “(1) IN GENERAL.—For purposes”, and

9 (2) by adding at the end the following new  
10 paragraph:

11 “(2) EXTENSION OF REPLACEMENT PERIOD.—

12 “(A) IN GENERAL.—In the case of  
13 drought, flood, or other weather-related condi-  
14 tions described in paragraph (1) which result in  
15 the area being designated as eligible for assist-  
16 ance by the Federal Government, subsection  
17 (a)(2)(B) shall be applied with respect to any  
18 converted property by substituting ‘4 years’ for  
19 ‘2 years’.

20 “(B) FURTHER EXTENSION BY SEC-  
21 RETARY.—The Secretary may extend on a re-  
22 gional basis the period for replacement under  
23 this section (after the application of subpara-  
24 graph (A)) for such additional time as the Sec-  
25 retary determines appropriate if the weather-re-

1           lated conditions which resulted in such applica-  
2           tion continue for more than 3 years.”.

3           (b) INCOME INCLUSION RULES.—Section 451(e) (re-  
4           lating to special rule for proceeds from livestock sold on  
5           account of drought, flood, or other weather-related condi-  
6           tions) is amended by adding at the end the following new  
7           paragraph:

8           “(3) SPECIAL ELECTION RULES.—If section  
9           1033(e)(2) applies to a sale or exchange of livestock  
10          described in paragraph (1), the election under para-  
11          graph (1) shall be deemed valid if made during the  
12          replacement period described in such section.”.

13          (c) EFFECTIVE DATE.—The amendments made by  
14          this section shall apply to any taxable year with respect  
15          to which the due date of the return is after December 31,  
16          2002.

17   **SEC. 413. EXCLUSION FOR LOAN PAYMENTS UNDER NA-**  
18                   **TIONAL HEALTH SERVICE CORPS LOAN RE-**  
19                   **PAYMENT PROGRAM.**

20          (a) IN GENERAL.—Section 108(f) (relating to stu-  
21          dent loans) is amended by adding at the end the following  
22          new paragraph:

23          “(4) LOAN PAYMENTS UNDER NATIONAL  
24          HEALTH SERVICE CORPS LOAN REPAYMENT PRO-  
25          GRAM.—In the case of an individual, gross income

1       shall not include any amount received under section  
2       338B(g) of the Public Health Service Act.”.

3       (b) EFFECTIVE DATE.—The amendment made by  
4       subsection (a) shall apply to amounts received by an indi-  
5       vidual in taxable years beginning after December 31,  
6       2002.

7       **SEC. 414. PAYMENT OF DIVIDENDS ON STOCK OF COOPERA-**  
8                   **TIVES WITHOUT REDUCING PATRONAGE**  
9                   **DIVIDENDS.**

10       (a) IN GENERAL.—Subsection (a) of section 1388  
11       (relating to patronage dividend defined) is amended by  
12       adding at the end the following: “For purposes of para-  
13       graph (3), net earnings shall not be reduced by amounts  
14       paid during the year as dividends on capital stock or other  
15       proprietary capital interests of the organization to the ex-  
16       tent that the articles of incorporation or bylaws of such  
17       organization or other contract with patrons provide that  
18       such dividends are in addition to amounts otherwise pay-  
19       able to patrons which are derived from business done with  
20       or for patrons during the taxable year.”.

21       (b) EFFECTIVE DATE.—The amendment made by  
22       this section shall apply to distributions in taxable years  
23       ending after the date of the enactment of this Act.

1   **TITLE V—SIMPLIFICATION AND**  
2           **OTHER PROVISIONS**  
3   **Subtitle A—Uniform Definition of**  
4           **Child**

5   **SEC. 501. UNIFORM DEFINITION OF CHILD, ETC.**

6       Section 152 is amended to read as follows:

7   **“SEC. 152. DEPENDENT DEFINED.**

8       “(a) IN GENERAL.—For purposes of this subtitle, the  
9   term ‘dependent’ means—

10           “(1) a qualifying child, or

11           “(2) a qualifying relative.

12       “(b) EXCEPTIONS.—For purposes of this section—

13           “(1) DEPENDENTS INELIGIBLE.—If an indi-  
14   vidual is a dependent of a taxpayer for any taxable  
15   year of such taxpayer beginning in a calendar year,  
16   such individual shall be treated as having no depend-  
17   ents for any taxable year of such individual begin-  
18   ning in such calendar year.

19           “(2) MARRIED DEPENDENTS.—An individual  
20   shall not be treated as a dependent of a taxpayer  
21   under subsection (a) if such individual has made a  
22   joint return with the individual’s spouse under sec-  
23   tion 6013 for the taxable year beginning in the cal-  
24   endar year in which the taxable year of the taxpayer  
25   begins.



1           “(3) CITIZENS OR NATIONALS OF OTHER COUN-  
2       TRIES.—

3           “(A) IN GENERAL.—The term ‘dependent’  
4       does not include an individual who is not a cit-  
5       izen or national of the United States unless  
6       such individual is a resident of the United  
7       States or a country contiguous to the United  
8       States.

9           “(B) EXCEPTION FOR ADOPTED CHILD.—  
10       Subparagraph (A) shall not exclude any child of  
11       a taxpayer (within the meaning of subsection  
12       (f)(1)(B)) from the definition of ‘dependent’  
13       if—

14           “(i) for the taxable year of the tax-  
15       payer, the child’s principal place of abode  
16       is the home of the taxpayer, and

17           “(ii) the taxpayer is a citizen or na-  
18       tional of the United States.

19       “(c) QUALIFYING CHILD.—For purposes of this  
20       section—

21           “(1) IN GENERAL.—The term ‘qualifying child’  
22       means, with respect to any taxpayer for any taxable  
23       year, an individual—

24           “(A) who bears a relationship to the tax-  
25       payer described in paragraph (2),

1           “(B) who has the same principal place of  
2           abode as the taxpayer for more than one-half of  
3           such taxable year,

4           “(C) who meets the age requirements of  
5           paragraph (3), and

6           “(D) who has not provided over one-half of  
7           such individual’s own support for the calendar  
8           year in which the taxable year of the taxpayer  
9           begins.

10          “(2) RELATIONSHIP TEST.—For purposes of  
11          paragraph (1)(A), an individual bears a relationship  
12          to the taxpayer described in this paragraph if such  
13          individual is—

14               “(A) a child of the taxpayer or a descend-  
15               ant of such a child, or

16               “(B) a brother, sister, stepbrother, or step-  
17               sister of the taxpayer or a descendant of any  
18               such relative.

19          “(3) AGE REQUIREMENTS.—

20               “(A) IN GENERAL.—For purposes of para-  
21               graph (1)(C), an individual meets the require-  
22               ments of this paragraph if such individual—

23                       “(i) has not attained the age of 19 as  
24                       of the close of the calendar year in which  
25                       the taxable year of the taxpayer begins, or

1                   “(ii) is a student who has not attained  
2                   the age of 24 as of the close of such cal-  
3                   endar year.

4                   “(B) SPECIAL RULE FOR DISABLED.—In  
5                   the case of an individual who is permanently  
6                   and totally disabled (as defined in section  
7                   22(e)(3)) at any time during such calendar  
8                   year, the requirements of subparagraph (A)  
9                   shall be treated as met with respect to such in-  
10                  dividual.

11                  “(4) SPECIAL RULE RELATING TO 2 OR MORE  
12                  CLAIMING QUALIFYING CHILD.—

13                       “(A) IN GENERAL.—Except as provided in  
14                       subparagraph (B) and subsection (e), if (but for  
15                       this paragraph) an individual may be and is  
16                       claimed as a qualifying child by 2 or more tax-  
17                       payers for a taxable year beginning in the same  
18                       calendar year, such individual shall be treated  
19                       as the qualifying child of the taxpayer who is—

20                               “(i) a parent of the individual, or

21                               “(ii) if clause (i) does not apply, the  
22                       taxpayer with the highest adjusted gross  
23                       income for such taxable year.

24                       “(B) MORE THAN 1 PARENT CLAIMING  
25                       QUALIFYING CHILD.—If the parents claiming

1 any qualifying child do not file a joint return  
2 together, such child shall be treated as the  
3 qualifying child of—

4 “(i) the parent with whom the child  
5 resided for the longest period of time dur-  
6 ing the taxable year, or

7 “(ii) if the child resides with both par-  
8 ents for the same amount of time during  
9 such taxable year, the parent with the  
10 highest adjusted gross income.

11 “(d) QUALIFYING RELATIVE.—For purposes of this  
12 section—

13 “(1) IN GENERAL.—The term ‘qualifying rel-  
14 ative’ means, with respect to any taxpayer for any  
15 taxable year, an individual—

16 “(A) who bears a relationship to the tax-  
17 payer described in paragraph (2),

18 “(B) whose gross income for the calendar  
19 year in which such taxable year begins is less  
20 than the exemption amount (as defined in sec-  
21 tion 151(d)),

22 “(C) with respect to whom the taxpayer  
23 provides over one-half of the individual’s sup-  
24 port for the calendar year in which such taxable  
25 year begins, and

1           “(D) who is not a qualifying child of such  
2           taxpayer or of any other taxpayer for any tax-  
3           able year beginning in the calendar year in  
4           which such taxable year begins.

5           “(2) RELATIONSHIP.—For purposes of para-  
6           graph (1)(A), an individual bears a relationship to  
7           the taxpayer described in this paragraph if the indi-  
8           vidual is any of the following with respect to the tax-  
9           payer:

10           “(A) A child or a descendant of a child.

11           “(B) A brother, sister, stepbrother, or  
12           stepsister.

13           “(C) The father or mother, or an ancestor  
14           of either.

15           “(D) A stepfather or stepmother.

16           “(E) A son or daughter of a brother or sis-  
17           ter of the taxpayer.

18           “(F) A brother or sister of the father or  
19           mother of the taxpayer.

20           “(G) A son-in-law, daughter-in-law, father-  
21           in-law, mother-in-law, brother-in-law, or sister-  
22           in-law.

23           “(H) An individual (other than an indi-  
24           vidual who at any time during the taxable year  
25           was the spouse, determined without regard to

1 section 7703, of the taxpayer) who, for the tax-  
2 able year of the taxpayer, has as such individ-  
3 ual's principal place of abode the home of the  
4 taxpayer and is a member of the taxpayer's  
5 household.

6 “(3) SPECIAL RULE RELATING TO MULTIPLE  
7 SUPPORT AGREEMENTS.—For purposes of paragraph  
8 (1)(C), over one-half of the support of an individual  
9 for a calendar year shall be treated as received from  
10 the taxpayer if—

11 “(A) no one person contributed over one-  
12 half of such support,

13 “(B) over one-half of such support was re-  
14 ceived from 2 or more persons each of whom,  
15 but for the fact that any such person alone did  
16 not contribute over one-half of such support,  
17 would have been entitled to claim such indi-  
18 vidual as a dependent for a taxable year begin-  
19 ning in such calendar year,

20 “(C) the taxpayer contributed over 10 per-  
21 cent of such support, and

22 “(D) each person described in subpara-  
23 graph (B) (other than the taxpayer) who con-  
24 tributed over 10 percent of such support files a  
25 written declaration (in such manner and form

1 as the Secretary may by regulations prescribe)  
2 that such person will not claim such individual  
3 as a dependent for any taxable year beginning  
4 in such calendar year.

5 “(4) SPECIAL RULE RELATING TO INCOME OF  
6 HANDICAPPED DEPENDENTS.—

7 “(A) IN GENERAL.—For purposes of para-  
8 graph (1)(B), the gross income of an individual  
9 who is permanently and totally disabled (as de-  
10 fined in section 22(e)(3)) at any time during  
11 the taxable year shall not include income attrib-  
12 utable to services performed by the individual  
13 at a sheltered workshop if—

14 “(i) the availability of medical care at  
15 such workshop is the principal reason for  
16 the individual’s presence there, and

17 “(ii) the income arises solely from ac-  
18 tivities at such workshop which are inci-  
19 dent to such medical care.

20 “(B) SHELTERED WORKSHOP DEFINED.—

21 For purposes of subparagraph (A), the term  
22 ‘sheltered workshop’ means a school—

23 “(i) which provides special instruction  
24 or training designed to alleviate the dis-  
25 ability of the individual, and

1                   “(ii) which is operated by an organi-  
2                   zation described in section 501(c)(3) and  
3                   exempt from tax under section 501(a), or  
4                   by a State, a possession of the United  
5                   States, any political subdivision of any of  
6                   the foregoing, the United States, or the  
7                   District of Columbia.

8                   “(5) SPECIAL SUPPORT TEST IN CASE OF STU-  
9                   DENTS.—For purposes of paragraph (1)(C), in the  
10                  case of an individual who is—

11                  “(A) a child of the taxpayer, and

12                  “(B) a student,

13                  amounts received as scholarships for study at an  
14                  educational organization described in section  
15                  170(b)(1)(A)(ii) shall not be taken into account in  
16                  determining whether such individual received more  
17                  than one-half of such individual’s support from the  
18                  taxpayer.

19                  “(6) SPECIAL RULES FOR SUPPORT.—For pur-  
20                  poses of this subsection—

21                  “(A) payments to a spouse which are in-  
22                  cludible in the gross income of such spouse  
23                  under section 71 or 682 shall not be treated as  
24                  a payment by the payor spouse for the support  
25                  of any dependent,



1           “(B) amounts expended for the support of  
2           a child or children shall be treated as received  
3           from the noncustodial parent (as defined in  
4           subsection (e)(3)(B)) to the extent that such  
5           parent provided amounts for such support, and

6           “(C) in the case of the remarriage of a  
7           parent, support of a child received from the  
8           parent’s spouse shall be treated as received  
9           from the parent.

10          “(e) SPECIAL RULE FOR DIVORCED PARENTS.—

11           “(1) IN GENERAL.—Notwithstanding subsection  
12          (c)(4) or (d)(1)(C), if—

13           “(A) a child receives over one-half of the  
14           child’s support during the calendar year from  
15           the child’s parents—

16           “(i) who are divorced or legally sepa-  
17           rated under a decree of divorce or separate  
18           maintenance,

19           “(ii) who are separated under a writ-  
20           ten separation agreement, or

21           “(iii) who live apart at all times dur-  
22           ing the last 6 months of the calendar year,  
23           and

1           “(B) such child is in the custody of 1 or  
2           both of the child’s parents for more than  $\frac{1}{2}$  of  
3           the calendar year,  
4           such child shall be treated as being the qualifying  
5           child or qualifying relative of the noncustodial par-  
6           ent for a calendar year if the requirements described  
7           in paragraph (2) are met.

8           “(2) REQUIREMENTS.—For purposes of para-  
9           graph (1), the requirements described in this para-  
10          graph are met if—

11           “(A) a decree of divorce or separate main-  
12          tenance or written agreement between the par-  
13          ents applicable to the taxable year beginning in  
14          such calendar year provides that—

15           “(i) the noncustodial parent shall be  
16          entitled to any deduction allowable under  
17          section 151 for such child, or

18           “(ii) the custodial parent will sign a  
19          written declaration that such parent will  
20          not claim such child as a dependent for  
21          such taxable year, and

22           “(B) in the case of such an agreement exe-  
23          cuted before January 1, 1985, the noncustodial  
24          parent provides at least \$600 for the support of  
25          such child during such calendar year.

1           “(3) CUSTODIAL PARENT AND NONCUSTODIAL  
2 PARENT.—For purposes of this subsection—

3           “(A) CUSTODIAL PARENT.—The term ‘cus-  
4 todial parent’ means the parent with whom a  
5 child shared the same principal place of abode  
6 for the greater portion of the calendar year.

7           “(B) NONCUSTODIAL PARENT.—The term  
8 ‘noncustodial parent’ means the parent who is  
9 not the custodial parent.

10          “(4) EXCEPTION FOR MULTIPLE-SUPPORT  
11 AGREEMENTS.—This subsection shall not apply in  
12 any case where over one-half of the support of the  
13 child is treated as having been received from a tax-  
14 payer under the provision of subsection (d)(3).

15          “(f) OTHER DEFINITIONS AND RULES.—For pur-  
16 poses of this section—

17          “(1) CHILD DEFINED.—

18               “(A) IN GENERAL.—The term ‘child’  
19 means an individual who is—

20                   “(i) a son, daughter, stepson, or step-  
21 daughter of the taxpayer, or

22                   “(ii) an eligible foster child of the tax-  
23 payer.

24               “(B) ADOPTED CHILD.—In determining  
25 whether any of the relationships specified in

1           subparagraph (A)(i) or paragraph (4) exists, a  
2           legally adopted individual of the taxpayer, or an  
3           individual who is placed with the taxpayer by  
4           an authorized placement agency for adoption by  
5           the taxpayer, shall be treated as a child of such  
6           individual by blood.

7           “(C) ELIGIBLE FOSTER CHILD.—For pur-  
8           poses of subparagraph (A)(ii), the term ‘eligible  
9           foster child’ means an individual who is placed  
10          with the taxpayer by an authorized placement  
11          agency or by judgment, decree, or other order  
12          of any court of competent jurisdiction.

13          “(2) STUDENT DEFINED.—The term ‘student’  
14          means an individual who during each of 5 calendar  
15          months during the calendar year in which the tax-  
16          able year of the taxpayer begins—

17                 “(A) is a full-time student at an edu-  
18                 cational organization described in section  
19                 170(b)(1)(A)(ii), or

20                 “(B) is pursuing a full-time course of insti-  
21                 tutional on-farm training under the supervision  
22                 of an accredited agent of an educational organi-  
23                 zation described in section 170(b)(1)(A)(ii) or  
24                 of a State or political subdivision of a State.

1           “(3) PLACE OF ABODE.—An individual shall  
2           not be treated as having the same principal place of  
3           abode of the taxpayer if at any time during the tax-  
4           able year of the taxpayer the relationship between  
5           the individual and the taxpayer is in violation of  
6           local law.

7           “(4) BROTHER AND SISTER.—The terms  
8           ‘brother’ and ‘sister’ include a brother or sister by  
9           the half blood.

10          “(5) TREATMENT OF MISSING CHILDREN.—

11               “(A) IN GENERAL.—Solely for the pur-  
12               poses referred to in subparagraph (B), a child  
13               of the taxpayer—

14                       “(i) who is presumed by law enforce-  
15                       ment authorities to have been kidnapped  
16                       by someone who is not a member of the  
17                       family of such child or the taxpayer, and

18                       “(ii) who had, for the taxable year in  
19                       which the kidnapping occurred, the same  
20                       principal place of abode as the taxpayer for  
21                       more than one-half of the portion of such  
22                       year before the date of the kidnapping,  
23               shall be treated as meeting the requirement of  
24               subsection (c)(1)(B) with respect to a taxpayer

1 for all taxable years ending during the period  
2 that the individual is kidnapped.

3 “(B) PURPOSES.—Subparagraph (A) shall  
4 apply solely for purposes of determining—

5 “(i) the deduction under section  
6 151(c),

7 “(ii) the credit under section 24 (re-  
8 lating to child tax credit),

9 “(iii) whether an individual is a sur-  
10 viving spouse or a head of a household (as  
11 such terms are defined in section 2), and

12 “(iv) the earned income credit under  
13 section 32.

14 “(C) COMPARABLE TREATMENT OF CER-  
15 TAIN QUALIFYING RELATIVES.—For purposes  
16 of this section, a child of the taxpayer—

17 “(i) who is presumed by law enforce-  
18 ment authorities to have been kidnapped  
19 by someone who is not a member of the  
20 family of such child or the taxpayer, and

21 “(ii) who was (without regard to this  
22 paragraph) a qualifying relative of the tax-  
23 payer for the portion of the taxable year  
24 before the date of the kidnapping,

1 shall be treated as a qualifying relative of the  
2 taxpayer for all taxable years ending during the  
3 period that the child is kidnapped.

4 “(D) TERMINATION OF TREATMENT.—  
5 Subparagraphs (A) and (C) shall cease to apply  
6 as of the first taxable year of the taxpayer be-  
7 ginning after the calendar year in which there  
8 is a determination that the child is dead (or, if  
9 earlier, in which the child would have attained  
10 age 18).

11 “(6) CROSS REFERENCES.—

“**For provision treating child as dependent of both  
parents for purposes of certain provisions, see sec-  
tions 105(b), 132(h)(2)(B), and 213(d)(5).**”.

12 **SEC. 502. MODIFICATIONS OF DEFINITION OF HEAD OF**  
13 **HOUSEHOLD.**

14 (a) HEAD OF HOUSEHOLD.—Clause (i) of section  
15 2(b)(1)(A) is amended to read as follows:

16 “(i) a qualifying child of the indi-  
17 vidual (as defined in section 152(c), deter-  
18 mined without regard to section 152(e)),  
19 but not if such child—

20 “(I) is married at the close of the  
21 taxpayer’s taxable year, and

22 “(II) is not a dependent of such  
23 individual by reason of section  
24 152(b)(2) or 152(b)3), or both, or”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 2(b)(2) is amended by striking sub-  
3 paragraph (A) and by redesignating subparagraphs  
4 (B), (C), and (D) as subparagraphs (A), (B), and  
5 (C), respectively.

6 (2) Clauses (i) and (ii) of section 2(b)(3)(B) are  
7 amended to read as follows:

8 “(i) subparagraph (H) of section  
9 152(d)(2), or

10 “(ii) paragraph (3) of section  
11 152(d).”.

12 **SEC. 503. MODIFICATIONS OF DEPENDENT CARE CREDIT.**

13 (a) IN GENERAL.—Section 21(a)(1) is amended by  
14 striking “In the case of an individual who maintains a  
15 household which includes as a member one or more quali-  
16 fying individuals (as defined in subsection (b)(1))” and in-  
17 serting “In the case of an individual for which there are  
18 1 or more qualifying individuals (as defined in subsection  
19 (b)(1)) with respect to such individual”.

20 (b) QUALIFYING INDIVIDUAL.—Paragraph (1) of sec-  
21 tion 21(b) is amended to read as follows:

22 “(1) QUALIFYING INDIVIDUAL.—The term  
23 ‘qualifying individual’ means—



1           “(A) a dependent of the taxpayer (as de-  
2           fined in section 152(a)(1)) who has not attained  
3           age 13,

4           “(B) a dependent of the taxpayer who is  
5           physically or mentally incapable of caring for  
6           himself or herself and who has the same prin-  
7           cipal place of abode as the taxpayer for more  
8           than one-half of such taxable year, or

9           “(C) the spouse of the taxpayer, if the  
10          spouse is physically or mentally incapable of  
11          caring for himself or herself and who has the  
12          same principal place of abode as the taxpayer  
13          for more than one-half of such taxable year.”.

14          (c) CONFORMING AMENDMENT.—Paragraph (1) of  
15          section 21(e) is amended to read as follows:

16               “(1) PLACE OF ABODE.—An individual shall  
17          not be treated as having the same principal place of  
18          abode of the taxpayer if at any time during the tax-  
19          able year of the taxpayer the relationship between  
20          the individual and the taxpayer is in violation of  
21          local law.”.

22          **SEC. 504. MODIFICATIONS OF CHILD TAX CREDIT.**

23               (a) IN GENERAL.—Paragraph (1) of section 24(c) is  
24          amended to read as follows:

1           “(1) IN GENERAL.—The term ‘qualifying child’  
2       means a qualifying child of the taxpayer (as defined  
3       in section 152(c)) who has not attained age 17.”.

4       (b) CONFORMING AMENDMENT.—Section 24(c)(2) is  
5       amended by striking “the first sentence of section  
6       152(b)(3)” and inserting “subparagraph (A) of section  
7       152(b)(3)”.

8       **SEC. 505. MODIFICATIONS OF EARNED INCOME CREDIT.**

9       (a) QUALIFYING CHILD.—Paragraph (3) of section  
10      32(c) is amended to read as follows:

11           “(3) QUALIFYING CHILD.—

12               “(A) IN GENERAL.—The term ‘qualifying  
13              child’ means a qualifying child of the taxpayer  
14              (as defined in section 152(c), determined with-  
15              out regard to paragraph (1)(D) thereof and sec-  
16              tion 152(e)).

17               “(B) MARRIED INDIVIDUAL.—The term  
18              ‘qualifying child’ shall not include an individual  
19              who is married as of the close of the taxpayer’s  
20              taxable year unless the taxpayer is entitled to  
21              a deduction under section 151 for such taxable  
22              year with respect to such individual (or would  
23              be so entitled but for section 152(e)).

24               “(C) PLACE OF ABODE.—For purposes of  
25              subparagraph (A), the requirements of section

1           152(c)(1)(B) shall be met only if the principal  
2           place of abode is in the United States.

3           “(D) IDENTIFICATION REQUIREMENTS.—

4                   “(i) IN GENERAL.—A qualifying child  
5           shall not be taken into account under sub-  
6           section (b) unless the taxpayer includes the  
7           name, age, and TIN of the qualifying child  
8           on the return of tax for the taxable year.

9                   “(ii) OTHER METHODS.—The Sec-  
10          retary may prescribe other methods for  
11          providing the information described in  
12          clause (i).”.

13          (b) CONFORMING AMENDMENTS.—

14               (1) Section 32(c)(1) is amended by striking  
15          subparagraph (C) and by redesignating subpara-  
16          graphs (D), (E), (F), and (G) as subparagraphs (C),  
17          (D), (E), and (F), respectively.

18               (2) Section 32(c)(4) is amended by striking  
19          “(3)(E)” and inserting “(3)(C)”.

20               (3) Section 32(m) is amended by striking “sub-  
21          sections (c)(1)(F)” and inserting “subsections  
22          (c)(1)(E)”.

1 **SEC. 506. MODIFICATIONS OF DEDUCTION FOR PERSONAL**  
2 **EXEMPTION FOR DEPENDENTS.**

3 Subsection (c) of section 151 is amended to read as  
4 follows:

5 “(c) **ADDITIONAL EXEMPTION FOR DEPENDENTS.**—  
6 An exemption of the exemption amount for each individual  
7 who is a dependent (as defined in section 152) of the tax-  
8 payer for the taxable year.”.

9 **SEC. 507. TECHNICAL AND CONFORMING AMENDMENTS.**

10 (1) Section 21(e)(5) is amended—

11 (A) by striking “paragraph (2) or (4) of”  
12 in subparagraph (A), and

13 (B) by striking “within the meaning of sec-  
14 tion 152(e)(1)” and inserting “as defined in  
15 section 152(e)(3)(A)”.

16 (2) Section 21(e)(6)(B) is amended by striking  
17 “section 151(c)(3)” and inserting “section  
18 152(f)(1)”.

19 (3) Section 25B(c)(2)(B) is amended by strik-  
20 ing “151(c)(4)” and inserting “152(f)(2)”.

21 (4)(A) Subparagraphs (A) and (B) of section  
22 51(i)(1) are each amended by striking “paragraphs  
23 (1) through (8) of section 152(a)” both places it ap-  
24 pears and inserting “subparagraphs (A) through (G)  
25 of section 152(d)(2)”.

1 (B) Section 51(i)(1)(C) is amended by striking  
2 “152(a)(9)” and inserting “152(d)(2)(H)”.

3 (5) Section 72(t)(7)(A)(iii) is amended by strik-  
4 ing “151(c)(3)” and inserting “152(f)(1)”.

5 (6) Section 129(e)(2) is amended by striking  
6 “151(c)(3)” and inserting “152(f)(1)”.

7 (7) The first sentence of section 132(h)(2)(B)  
8 is amended by striking “151(c)(3)” and inserting  
9 “152(f)(1)”.

10 (8) Section 153 is amended by striking para-  
11 graph (1) and by redesignating paragraphs (2), (3),  
12 and (4) as paragraphs (1), (2), and (3), respectively.

13 (9) Section 170(g)(3) is amended by striking  
14 “paragraphs (1) through (8) of section 152(a)” and  
15 inserting “subparagraphs (A) through (G) of section  
16 152(d)(2)”.

17 (10) The second sentence of section 213(d)(11)  
18 is amended by striking “paragraphs (1) through (8)  
19 of section 152(a)” and inserting “subparagraphs (A)  
20 through (G) of section 152(d)(2)”.

21 (11) Section 529(e)(2)(B) is amended by strik-  
22 ing “paragraphs (1) through (8) of section 152(a)”  
23 and inserting “subparagraphs (A) through (G) of  
24 section 152(d)(2)”.

1           (12) Section 2032A(c)(7)(D) is amended by  
2           striking “section 151(c)(4)” and inserting “section  
3           152(f)(2)”.

4           (13) Section 7701(a)(17) is amended by strik-  
5           ing “152(b)(4), 682,” and inserting “682”.

6           (14) Section 7702B(f)(2)(C)(iii) is amended by  
7           striking “paragraphs (1) through (8) of section  
8           152(a)” and inserting “subparagraphs (A) through  
9           (G) of section 152(d)(2)”.

10          (15) Section 7703(b)(1) is amended—

11                   (A) by striking “151(c)(3)” and inserting  
12                   “152(f)(1)”, and

13                   (B) by striking “paragraph (2) or (4) of”.

14   **SEC. 508. EFFECTIVE DATE.**

15          The amendments made by this subtitle shall apply to  
16   taxable years beginning after December 31, 2003.

17           **Subtitle B—Simplification**

18   **SEC. 511. CONSOLIDATION OF LIFE AND NON-LIFE COM-**

19                   **PANY RETURNS.**

20          (a) IN GENERAL.—Section 1504 (relating to defini-  
21   tion of affiliated group) is amended by striking subsection  
22   (c) and by redesignating subsections (d), (e), and (f) as  
23   subsections (c), (d), and (e), respectively.

24          (b) CONFORMING AMENDMENTS.—

1           (1) Section 243(b)(2)(A) is amended by strik-  
2           ing “, 1504(b)(4), and 1504(c)” and inserting “and  
3           1504(b)(4)”.

4           (2) Section 818(e)(1) is amended by striking  
5           “If an election under section 1504(c)(2) is effect  
6           with respect to an affiliated group for the taxable  
7           year” and inserting “If an affiliated group includes  
8           members which are, and which are not, life insur-  
9           ance companies for any taxable year”.

10          (3) Section 1503(c)(1) is amended by striking  
11          “an election under section 1504(c)(2) is in effect for  
12          the taxable year”.

13          (c) EFFECTIVE DATE.—The amendments made by  
14          this section shall apply to taxable years beginning after  
15          December 31, 2009.

16          (d) WAIVER OF 5-YEAR WAITING PERIOD.—Under  
17          regulations prescribed by the Secretary of the Treasury  
18          or his delegate, an automatic waiver from the 5-year wait-  
19          ing period for reconsolidation provided in section  
20          1504(a)(3) of the Internal Revenue Code of 1986 shall  
21          be granted to any corporation which was previously an in-  
22          cludible corporation but was subsequently deemed a non-  
23          includible corporation as a result of becoming a subsidiary  
24          of a corporation which was not an includible corporation  
25          solely by operation of section 1504(c)(2) of such Code (as

1 in effect on the day before the date of the enactment of  
2 this Act).

3 (e) NONTERMINATION OF GROUP.—No affiliated  
4 group shall terminate solely as a result of the amendments  
5 made by this section.

6 **SEC. 512. SPECIAL RULES FOR TAXATION OF LIFE INSUR-**  
7 **ANCE COMPANIES.**

8 (a) REDUCTION IN MUTUAL LIFE INSURANCE COM-  
9 PANY DEDUCTIONS NOT TO APPLY.—

10 (1) IN GENERAL.—Section 809 (relating to re-  
11 duction in certain deductions of material life insur-  
12 ance companies) is amended by adding at the end  
13 the following:

14 “(j) DIFFERENTIAL EARNINGS RATE TREATED AS  
15 ZERO.—Notwithstanding subsection (c) or (f), the dif-  
16 ferential earnings rate shall be treated as zero for pur-  
17 poses of computing both the differential earnings amount  
18 and the recomputed differential earnings amount for any  
19 taxable year of a mutual life insurance company beginning  
20 after December 31, 2003, and before January 1, 2009.”.

21 (2) EFFECTIVE DATE.—The amendment made  
22 by this section shall apply to taxable years beginning  
23 after December 31, 2003.

24 (b) DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-  
25 1984 POLICYHOLDERS SURPLUS ACCOUNT.—



1           (1) IN GENERAL.—Section 815 (relating to dis-  
2       tributions to shareholders from pre-1984 policy-  
3       holders surplus account) is amended by adding at  
4       the end the following:

5       “(g) SPECIAL RULES APPLICABLE DURING 2004  
6       THROUGH 2008.—In the case of any taxable year of a  
7       stock life insurance company beginning after December  
8       31, 2003, and before January 1, 2009—

9           “(1) the amount under subsection (a)(2) for  
10       such taxable year shall be treated as zero, and

11          “(2) notwithstanding subsection (b), in deter-  
12       mining any subtractions from an account under sub-  
13       sections (c)(3) and (d)(3), any distribution to share-  
14       holders during such taxable year shall be treated as  
15       made first out of the policyholders surplus account,  
16       then out of the shareholders surplus account, and fi-  
17       nally out of other accounts.”.

18          (2) EFFECTIVE DATE.—The amendment made  
19       by this section shall apply to taxable years beginning  
20       after December 31, 2003.

21       **SEC. 513. MODIFICATION OF ACTIVE BUSINESS DEFINITION**  
22                               **UNDER SECTION 355.**

23       (a) IN GENERAL.—Section 355(b) (defining active  
24       conduct of a trade or business) is amended by adding at  
25       the end the following new paragraph:

1           “(3) SPECIAL RULES RELATING TO ACTIVE  
2 BUSINESS REQUIREMENT.—

3           “(A) IN GENERAL.—For purposes of deter-  
4 mining whether a corporation meets the re-  
5 quirement of paragraph (2)(A), all members of  
6 such corporation’s separate affiliated group  
7 shall be treated as one corporation. For pur-  
8 poses of the preceding sentence, a corporation’s  
9 separate affiliated group is the affiliated group  
10 which would be determined under section  
11 1504(a) if such corporation were the common  
12 parent and section 1504(b) did not apply.

13           “(B) CONTROL.—For purposes of para-  
14 graph (2)(D), all distributee corporations which  
15 are members of the same affiliated group (as  
16 defined in section 1504(a) without regard to  
17 section 1504(b)) shall be treated as one dis-  
18 tributee corporation.”.

19 (b) CONFORMING AMENDMENTS.—

20           (1) Subparagraph (A) of section 355(b)(2) is  
21 amended to read as follows:

22           “(A) it is engaged in the active conduct of  
23 a trade or business,”.

24           (2) Section 355(b)(2) is amended by striking  
25 the last sentence.

1 (c) EFFECTIVE DATE.—

2 (1) IN GENERAL.—The amendments made by  
3 this section shall apply—

4 (A) to distributions after the date of the  
5 enactment of this Act, and

6 (B) for purposes of determining the contin-  
7 ued qualification under section 355(b)(2)(A) of  
8 the Internal Revenue Code of 1986 (as amend-  
9 ed by subsection (b)(1)) of distributions made  
10 before such date, as a result of an acquisition,  
11 disposition, or other restructuring after such  
12 date.

13 (2) TRANSITION RULE.—The amendments  
14 made by this section shall not apply to any distribu-  
15 tion pursuant to a transaction which is—

16 (A) made pursuant to an agreement which  
17 was binding on such date of enactment and at  
18 all times thereafter,

19 (B) described in a ruling request submitted  
20 to the Internal Revenue Service on or before  
21 such date, or

22 (C) described on or before such date in a  
23 public announcement or in a filing with the Se-  
24 curities and Exchange Commission.

1           (3) ELECTION TO HAVE AMENDMENTS  
2       APPLY.—Paragraph (2) shall not apply if the dis-  
3       tributing corporation elects not to have such para-  
4       graph apply to distributions of such corporation.  
5       Any such election, once made, shall be irrevocable.

6       **Subtitle C—Other Provisions**

7       **SEC. 521. CIVIL RIGHTS TAX RELIEF.**

8       (a) IN GENERAL.—Part VII of subchapter B of chap-  
9       ter 1 of the Internal Revenue Code of 1986 (relating to  
10      additional itemized deductions for individuals) is amended  
11      by redesignating section 223 as section 224 and by insert-  
12      ing after section 222 the following new section:

13      **“SEC. 223. ATTORNEY FEES AND COSTS IN CONNECTION**  
14                           **WITH AMOUNTS RECEIVED ON ACCOUNT OF**  
15                           **CERTAIN UNLAWFUL DISCRIMINATION OR**  
16                           **CIVIL FRAUD AGAINST THE UNITED STATES.**

17      “(a) IN GENERAL.—There shall be allowed as a de-  
18      duction for any taxable year an amount equal to the lesser  
19      of—

20           “(1) the attorney fees and court costs paid by,  
21      or on behalf of, the taxpayer for such taxable year  
22      in connection with any action involving a claim of  
23      unlawful discrimination or a claim of a violation of  
24      subchapter III of chapter 37 of title 31, United  
25      States Code, or

1           “(2) the amount includible in the taxpayer’s  
2           gross income for such taxable year on account of a  
3           judgment or settlement (whether by suit or agree-  
4           ment and whether as lump sums or periodic pay-  
5           ments) resulting from such claim.

6           “(b) UNLAWFUL DISCRIMINATION DEFINED.—For  
7           purposes of this section, the term ‘unlawful discrimination’  
8           means an act that is unlawful under any of the following:

9           “(1) Section 302 of the Civil Rights Act of  
10          1991 (2 U.S.C. 1202).

11          “(2) Section 201, 202, 203, 204, 205, 206, or  
12          207 of the Congressional Accountability Act of 1995  
13          (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or  
14          1317).

15          “(3) The Fair Labor Standards Act of 1938  
16          (29 U.S.C. 201 et seq.).

17          “(4) Section 4 or 15 of the Age Discrimination  
18          in Employment Act of 1967 (29 U.S.C. 623 or  
19          633a).

20          “(5) Section 501 or 504 of the Rehabilitation  
21          Act of 1973 (29 U.S.C. 791 or 794).

22          “(6) Section 510 of the Employee Retirement  
23          Income Security Act of 1974 (29 U.S.C. 1140).

24          “(7) Title IX of the Education Amendments of  
25          1972 (29 U.S.C. 1681 et seq.).

1           “(8) The Employee Polygraph Protection Act of  
2           1988 (29 U.S.C. 201 et seq.).

3           “(9) The Worker Adjustment and Retraining  
4           Notification Act (29 U.S.C. 2102 et seq.).

5           “(10) Section 105 of the Family and Medical  
6           Leave Act of 1993 (29 U.S.C. 2615).

7           “(11) Chapter 43 of title 38, United States  
8           Code (relating to employment and reemployment  
9           rights of members of the uniformed services).

10          “(12) Section 1977, 1979, or 1980 of the Re-  
11          vised Statutes (42 U.S.C. 1981, 1983, or 1985).

12          “(13) Section 703, 704, or 717 of the Civil  
13          Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3,  
14          or 2000e–16).

15          “(14) Section 804, 805, 806, 808, or 818 of the  
16          Fair Housing Act (42 U.S.C. 3604, 3605, 3606,  
17          3608, or 3617).

18          “(15) Section 102, 202, 302, or 503 of the  
19          Americans with Disabilities Act of 1990 (42 U.S.C.  
20          12112, 12132, 12182, or 12203).

21          “(16) Section 40302 of the Violence Against  
22          Women Act of 1994 (42 U.S.C. 13981).

23          “(17) Any provision of Federal law (popularly  
24          known as whistleblower protection provisions) pro-  
25          hibiting the discharge of an employee, the discrimi-

1 nation against an employee, or any other form of re-  
2 taliation or reprisal against an employee for assert-  
3 ing rights or taking other actions permitted under  
4 Federal law.

5 “(18) Any provision of State or local law, or  
6 common law claims permitted under Federal, State,  
7 or local law—

8 “(A) providing for the enforcement of civil  
9 rights, or

10 “(B) regulating any aspect of the employ-  
11 ment relationship, including prohibiting the dis-  
12 charge of an employee, the discrimination  
13 against an employee, or any other form of retal-  
14 iation or reprisal against an employee for as-  
15 serting rights or taking other actions permitted  
16 by law.”.

17 (b) DEDUCTION ALLOWED WHETHER OR NOT TAX-  
18 PAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a)  
19 of section 62 (defining adjusted gross income) is amended  
20 by inserting after paragraph (18) the following new item:

21 “(19) COSTS INVOLVING DISCRIMINATION  
22 SUITS.—The deduction allowed by section 223.”.

23 (c) CLERICAL AMENDMENT.—The table of sections  
24 for part VII of subchapter B of chapter 1 is amended by

1 striking the last item and inserting the following new  
2 items:

“Sec. 223. Attorney fees and costs in connection with amounts received on account of certain unlawful discrimination or civil fraud against the United States.

“Sec. 224. Cross reference.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to fees and costs paid after the  
5 date of the enactment of this Act with respect to any judgment or settlement occurring after such date.

7 **SEC. 522. INCREASE IN SECTION 382 LIMITATION FOR COMPANIES EMERGING FROM BANKRUPTCY.**

9 (a) **IN GENERAL.**—Section 382(b) (relating to section  
10 382 limitation) is amended by adding at the end the following new paragraph:

12 “(4) **INCREASE IN SECTION 382 LIMITATION FOR COMPANIES EMERGING FROM BANKRUPTCY.**—In  
13 the case of any new loss corporation which immediately before any ownership change was an old loss  
14 corporation under the jurisdiction of the court in a  
15 title 11 or similar case (as defined in subsection  
16 (l)(5)(G)), the section 382 limitation for any post-  
17 change year beginning in 2004 or 2005 shall be an  
18 amount equal to 200 percent of the amount otherwise  
19 determined under paragraph (1) for such  
20 year.”.



1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to ownership changes after Decem-  
3 ber 31, 2002.

4 **SEC. 523. INCREASE IN HISTORIC REHABILITATION CREDIT**  
5 **FOR CERTAIN LOW-INCOME HOUSING FOR**  
6 **THE ELDERLY.**

7 (a) IN GENERAL.—Section 47 (relating to rehabilita-  
8 tion credit) is amended by adding at the end the following  
9 new subsection:

10 “(e) SPECIAL RULE REGARDING CERTAIN HISTORIC  
11 STRUCTURES.—In the case of any qualified rehabilitation  
12 expenditure with respect to any certified historic  
13 structure—

14 “(1) which is placed in service after the date of  
15 the enactment of this subsection,

16 “(2) which is part of a qualified low-income  
17 building with respect to which a credit under section  
18 42 is allowed, and

19 “(3) substantially all of the residential rental  
20 units of which are used for tenants who have at-  
21 tained the age of 65,

22 subsection (a)(2) shall be applied by substituting ‘25 per-  
23 cent’ for ‘20 percent’.”.

24 (b) APPLICATION OF MACRS.—The Internal Rev-  
25 enue Code of 1986 shall be applied and administered as

1 if paragraph (4)(X) of section 251(d) of the Tax Reform  
2 Act of 1986 as applied to the amendments made by section  
3 201 of such Act had not been enacted with respect to any  
4 property described in such paragraph and placed in service  
5 after the date of the enactment of this Act.

6 (c) EFFECTIVE DATE.—The amendment made by  
7 subsection (a) shall apply to property placed in service  
8 after the date of the enactment of this Act.

9 **SEC. 524. MODIFICATION OF APPLICATION OF INCOME**  
10 **FORECAST METHOD OF DEPRECIATION.**

11 (a) IN GENERAL.—Section 167(g) (relating to depre-  
12 ciation under income forecast method) is amended by add-  
13 ing at the end the following new paragraph:

14 “(7) TREATMENT OF PARTICIPATIONS AND RE-  
15 SIDUALS.—

16 “(A) IN GENERAL.—For purposes of deter-  
17 mining the depreciation deduction allowable  
18 with respect to a property under this sub-  
19 section, the taxpayer may include participations  
20 and residuals with respect to such property in  
21 the adjusted basis of such property for the tax-  
22 able year in which the property is placed in  
23 service, but only to the extent that such partici-  
24 pations and residuals relate to income estimated  
25 (for purposes of this subsection) to be earned in

1 connection with the property before the close of  
2 the 10th taxable year referred to in paragraph  
3 (1)(A).

4 “(B) PARTICIPATIONS AND RESIDUALS.—  
5 For purposes of this paragraph, the term ‘par-  
6 ticipations and residuals’ means, with respect to  
7 any property, costs the amount of which by con-  
8 tract varies with the amount of income earned  
9 in connection with such property.

10 “(C) SPECIAL RULES RELATING TO RE-  
11 COMPUTATION YEARS.—If the adjusted basis of  
12 any property is determined under this para-  
13 graph, paragraph (4) shall be applied by sub-  
14 stituting ‘for each taxable year in such period’  
15 for ‘for such period’.

16 “(D) COORDINATION WITH OTHER  
17 RULES.—

18 “(i) Notwithstanding subparagraph  
19 (A), the taxpayer may exclude participa-  
20 tions and residuals from the adjusted basis  
21 of such property and deduct such partici-  
22 pations and residuals in the taxable year  
23 that such participations and residuals are  
24 paid.

1                   “(ii) Deductions computed in accord-  
2                   ance with this paragraph shall be allowable  
3                   notwithstanding paragraph (1)(B) or sec-  
4                   tions 263, 263A, 404, 419, or 461(h).

5                   “(E) AUTHORITY TO MAKE ADJUST-  
6                   MENTS.—The Secretary shall prescribe appro-  
7                   priate adjustments to the basis of property and  
8                   to the look-back method for the additional  
9                   amounts allowable as a deduction solely by rea-  
10                  son of this paragraph.”.

11               (b) DETERMINATION OF INCOME.—Section 167(g)(5)  
12               (relating to special rules) is amended by redesignating  
13               subparagraphs (E) and (F) as subparagraphs (F) and  
14               (G), respectively, and inserting after subparagraph (D)  
15               the following new subparagraph:

16                   “(E) TREATMENT OF DISTRIBUTION  
17                   COSTS.—For purposes of this subsection, the  
18                   income with respect to any property shall be the  
19                   taxpayer’s gross income from such property.”.

20               (c) EFFECTIVE DATE.—The amendments made by  
21               this section shall apply to property placed in service after  
22               the date of the enactment of this Act.

1 SEC. 525. ADDITIONAL ADVANCE REFUNDINGS OF CERTAIN  
2 GOVERNMENTAL BONDS.

3 (a) IN GENERAL.—Section 149(d)(3)(A)(i) (relating  
4 to advance refundings of other bonds) is amended—

5 (1) by striking “or” at the end of subclause (I),

6 (2) by adding “or” at the end of subclause (II),

7 and

8 (3) by inserting after subclause (II) the fol-  
9 lowing:

“(III) the 2nd advance refunding of the original bond if the original bond was issued after 1985 or the 3rd advance refunding of the original bond if the original bond was issued before 1986, if, in either case, the refunding bond is issued before the date which is 2 years after the date of the enactment of this subclause and the original bond was issued as part of an issue 90 percent or more of the net proceeds of which were used to finance a public elementary or secondary school in any State in which the State’s highest court ruled by opinion issued on November 21, 2002, that the State school funding system

1 violated the State constitution and  
2 was constitutionally inadequate.”.

3 (b) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to refunding bonds issued on or  
5 after the date of the enactment of this Act.

6 **SEC. 526. EXCLUSION OF INCOME DERIVED FROM CERTAIN**  
7 **WAGERS ON HORSE RACES FROM GROSS IN-**  
8 **COME OF NONRESIDENT ALIEN INDIVIDUALS.**

9 (a) IN GENERAL.—Subsection (b) of section 872 (re-  
10 lating to exclusions) is amended by redesignating para-  
11 graphs (5), (6), and (7) as paragraphs (6), (7), and (8),  
12 respectively, and inserting after paragraph (4) the fol-  
13 lowing new paragraph:

14 “(5) INCOME DERIVED FROM WAGERING  
15 TRANSACTIONS IN CERTAIN PARIMUTUEL POOLS.—  
16 Gross income derived by a nonresident alien indi-  
17 vidual from a legal wagering transaction initiated  
18 outside the United States in a parimutuel pool with  
19 respect to a live horse race in the United States.”.

20 (b) CONFORMING AMENDMENT.—Section 883(a)(4)  
21 is amended by striking “(5), (6), and (7)” and inserting  
22 “(6), (7), and (8)”.

23 (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to proceeds from wagering trans-  
25 actions after September 30, 2003.

1 **SEC. 527. FEDERAL REIMBURSEMENT OF EMERGENCY**  
2 **HEALTH SERVICES FURNISHED TO UNDOCU-**  
3 **MENTED ALIENS.**

4 (a) TOTAL AMOUNT AVAILABLE FOR ALLOTMENT.—  
5 There is appropriated, out of any funds in the Treasury  
6 not otherwise appropriated, \$48,000,000 for fiscal year  
7 2004, for the purpose of making allotments under this sec-  
8 tion to States described in paragraph (1) or (2) of sub-  
9 section (b). Funds appropriated under the preceding sen-  
10 tence shall remain available until expended.

11 (b) STATE ALLOTMENTS.—

12 (1) BASED ON PERCENTAGE OF UNDOCU-  
13 MENTED ALIENS.—

14 (A) IN GENERAL.—Out of the amount ap-  
15 propriated under subsection (a) for fiscal year  
16 2004, the Secretary shall use \$32,000,000 of  
17 such amount to make allotments for such fiscal  
18 year in accordance with subparagraph (B).

19 (B) FORMULA.—The amount of the allot-  
20 ment for each State for fiscal year 2004 shall  
21 be equal to the product of—

22 (i) the total amount available for al-  
23 lotments under this paragraph for the fis-  
24 cal year; and

25 (ii) the percentage of undocumented  
26 aliens residing in the State with respect to

1           the total number of such aliens residing in  
2           all States, as determined by the Statistics  
3           Division of the Immigration and Natu-  
4           ralization Service, as of January 2003,  
5           based on the 2000 decennial census.

6           (2) BASED ON NUMBER OF UNDOCUMENTED  
7       ALIEN APPREHENSION STATES.—

8           (A) IN GENERAL.—Out of the amount ap-  
9           propriated under subsection (a) for fiscal year  
10          2004, the Secretary shall use \$16,000,000 of  
11          such amount to make allotments for such fiscal  
12          year for each of the 6 States with the highest  
13          number of undocumented alien apprehensions  
14          for such fiscal year.

15          (B) DETERMINATION OF ALLOTMENTS.—  
16          The amount of the allotment for each State de-  
17          scribed in subparagraph (A) for fiscal year  
18          2004 shall bear the same ratio to the total  
19          amount available for allotments under this  
20          paragraph for the fiscal year as the ratio of the  
21          number of undocumented alien apprehensions  
22          in the State in that fiscal year bears to the  
23          total of such numbers for all such States for  
24          such fiscal year.



1           (C) DATA.—For purposes of this para-  
2           graph, the highest number of undocumented  
3           alien apprehensions for fiscal year 2004 shall be  
4           based on the 4 most recent quarterly apprehen-  
5           sion rates for undocumented aliens in such  
6           States, as reported by the Immigration and  
7           Naturalization Service.

8           (3) RULE OF CONSTRUCTION.—Nothing in this  
9           section shall be construed as prohibiting a State that  
10          is described in both of paragraphs (1) and (2) from  
11          receiving an allotment under both paragraphs for  
12          fiscal year 2004.

13         (c) USE OF FUNDS.—

14           (1) AUTHORITY TO MAKE PAYMENTS.—From  
15           the allotments made for a State under subsection (b)  
16           for fiscal year 2004, the Secretary shall pay directly  
17           to local governments, hospitals, or other providers  
18           located in the State (including providers of services  
19           received through an Indian Health Service facility  
20           whether operated by the Indian Health Service or by  
21           an Indian tribe or tribal organization) that provide  
22           uncompensated emergency health services furnished  
23           to undocumented aliens during that fiscal year, and  
24           to the State, such amounts (subject to the total  
25           amount available from such allotments) as the local

1 governments, hospitals, providers, or State dem-  
2 onstrate were incurred for the provision of such  
3 services during that fiscal year.

4 (2) LIMITATION ON STATE USE OF FUNDS.—  
5 Funds paid to a State from allotments made under  
6 subsection (b) for fiscal year 2004 may only be used  
7 for making payments to local governments, hos-  
8 pitals, or other providers for costs incurred in pro-  
9 viding emergency health services to undocumented  
10 aliens or for State costs incurred with respect to the  
11 provision of emergency health services to such aliens.

12 (3) INCLUSION OF COSTS INCURRED WITH RE-  
13 SPECT TO CERTAIN ALIENS.—Uncompensated emer-  
14 gency health services furnished to aliens who have  
15 been allowed to enter the United States for the sole  
16 purpose of receiving emergency health services may  
17 be included in the determination of costs incurred by  
18 a State, local government, hospital, or other provider  
19 with respect to the provision of such services.

20 (d) APPLICATIONS; ADVANCE PAYMENTS.—

21 (1) DEADLINE FOR ESTABLISHMENT OF APPLI-  
22 CATION PROCESS.—

23 (A) IN GENERAL.—Not later than Sep-  
24 tember 1, 2003, the Secretary shall establish a  
25 process under which States, local governments,

1 hospitals, or other providers located in the  
2 State may apply for payments from allotments  
3 made under subsection (b) for fiscal year 2004  
4 for uncompensated emergency health services  
5 furnished to undocumented aliens during that  
6 fiscal year.

7 (B) INCLUSION OF MEASURES TO COMBAT  
8 FRAUD.—The Secretary shall include in the  
9 process established under subparagraph (A)  
10 measures to ensure that fraudulent payments  
11 are not made from the allotments determined  
12 under subsection (b).

13 (2) ADVANCE PAYMENT; RETROSPECTIVE AD-  
14 JUSTMENT.—The process established under para-  
15 graph (1) shall allow for making payments under  
16 this section for each quarter of fiscal year 2004 on  
17 the basis of advance estimates of expenditures sub-  
18 mitted by applicants for such payments and such  
19 other investigation as the Secretary may find nec-  
20 essary, and for making reductions or increases in  
21 the payments as necessary to adjust for any over-  
22 payment or underpayment for prior quarters of such  
23 fiscal year.

24 (e) DEFINITIONS.—In this section:

1           (1) HOSPITAL.—The term “hospital” has the  
2           meaning given such term in section 1861(e) of the  
3           Social Security Act (42 U.S.C. 1395x(e)).

4           (2) INDIAN TRIBE; TRIBAL ORGANIZATION.—  
5           The terms “Indian tribe” and “tribal organization”  
6           have the meanings given such terms in section 4 of  
7           the Indian Health Care Improvement Act (25 U.S.C.  
8           1603).

9           (3) PROVIDER.—The term “provider” includes  
10          a physician, any other health care professional li-  
11          censed under State law, and any other entity that  
12          furnishes emergency health services, including ambu-  
13          lance services.

14          (4) SECRETARY.—The term “Secretary” means  
15          the Secretary of Health and Human Services.

16          (5) STATE.—The term “State” means the 50  
17          States and the District of Columbia.

18          (f) ENTITLEMENT.—This section constitutes budget  
19          authority in advance of appropriations Acts and rep-  
20          resents the obligation of the Federal Government to pro-  
21          vide for the payment of amounts provided under this sec-  
22          tion.

23   **SEC. 528. PREMIUMS FOR MORTGAGE INSURANCE.**

24          (a) MORTGAGE INSURANCE PREMIUMS TREATED AS  
25          INTEREST.—

1           (1) IN GENERAL.—Paragraph (3) of section  
2       163(h) (relating to qualified residence interest) is  
3       amended by adding after subparagraph (D) the fol-  
4       lowing new subparagraph:

5                   “(E) MORTGAGE INSURANCE PREMIUMS  
6       TREATED AS INTEREST.—

7                   “(i) IN GENERAL.—Premiums paid or  
8       accrued for qualified mortgage insurance  
9       by a taxpayer during the taxable year in  
10      connection with acquisition indebtedness  
11      with respect to a qualified residence of the  
12      taxpayer shall be treated for purposes of  
13      this subsection as qualified residence inter-  
14      est.

15                  “(ii) PHASEOUT.—The amount other-  
16      wise allowable as a deduction under clause  
17      (i) shall be reduced (but not below zero) by  
18      10 percent of such amount for each \$1,000  
19      (\$500 in the case of a married individual  
20      filing a separate return) (or fraction there-  
21      of) that the taxpayer’s adjusted gross in-  
22      come for the taxable year exceeds  
23      \$100,000 (\$50,000 in the case of a mar-  
24      ried individual filing a separate return).”.

1           (2) DEFINITION AND SPECIAL RULES.—Para-  
2       graph (4) of section 163(h) (relating to other defini-  
3       tions and special rules) is amended by adding at the  
4       end the following new subparagraphs:

5           “(E) QUALIFIED MORTGAGE INSUR-  
6       ANCE.—The term ‘qualified mortgage insur-  
7       ance’ means—

8           “(i) mortgage insurance provided by  
9       the Veterans Administration, the Federal  
10      Housing Administration, or the Rural  
11      Housing Administration, and

12      “(ii) private mortgage insurance (as  
13      defined by section 2 of the Homeowners  
14      Protection Act of 1998 (12 U.S.C. 4901),  
15      as in effect on the date of the enactment  
16      of this subparagraph).

17      “(F) SPECIAL RULES FOR PREPAID QUALI-  
18      FIED MORTGAGE INSURANCE.—Any amount  
19      paid by the taxpayer for qualified mortgage in-  
20      surance that is properly allocable to any mort-  
21      gage the payment of which extends to periods  
22      that are after the close of the taxable year in  
23      which such amount is paid shall be chargeable  
24      to capital account and shall be treated as paid  
25      in such periods to which so allocated. No deduc-

1           tion shall be allowed for the unamortized bal-  
2           ance of such account if such mortgage is satis-  
3           fied before the end of its term. The preceding  
4           sentences shall not apply to amounts paid for  
5           qualified mortgage insurance provided by the  
6           Veterans Administration or the Rural Housing  
7           Administration.”.

8           (b) INFORMATION RETURNS RELATING TO MORT-  
9           GAGE INSURANCE.—Section 6050H (relating to returns  
10          relating to mortgage interest received in trade or business  
11          from individuals) is amended by adding at the end the fol-  
12          lowing new subsection:

13          “(h) RETURNS RELATING TO MORTGAGE INSURANCE  
14          PREMIUMS.—

15               “(1) IN GENERAL.—The Secretary may pre-  
16          scribe, by regulations, that any person who, in the  
17          course of a trade or business, receives from any indi-  
18          vidual premiums for mortgage insurance aggregating  
19          \$600 or more for any calendar year, shall make a  
20          return with respect to each such individual. Such re-  
21          turn shall be in such form, shall be made at such  
22          time, and shall contain such information as the Sec-  
23          retary may prescribe.

24               “(2) STATEMENT TO BE FURNISHED TO INDIV-  
25          VIDUALS WITH RESPECT TO WHOM INFORMATION IS

1       REQUIRED.—Every person required to make a re-  
2       turn under paragraph (1) shall furnish to each indi-  
3       vidual with respect to whom a return is made a writ-  
4       ten statement showing such information as the Sec-  
5       retary may prescribe. Such written statement shall  
6       be furnished on or before January 31 of the year  
7       following the calendar year for which the return  
8       under paragraph (1) was required to be made.

9           “(3) SPECIAL RULES.—For purposes of this  
10       subsection—

11           “(A) rules similar to the rules of sub-  
12       section (c) shall apply, and

13           “(B) the term ‘mortgage insurance’  
14       means—

15           “(i) mortgage insurance provided by  
16       the Veterans Administration, the Federal  
17       Housing Administration, or the Rural  
18       Housing Administration, and

19           “(ii) private mortgage insurance (as  
20       defined by section 2 of the Homeowners  
21       Protection Act of 1998 (12 U.S.C. 4901),  
22       as in effect on the date of the enactment  
23       of this subparagraph).”.

24       (c) EFFECTIVE DATE.—The amendments made by  
25       this section shall apply to amounts paid or accrued after



1 the date of enactment of this section in taxable years end-  
2 ing after such date.

3 **TITLE VI—SUNSET**

4 **SEC. 601. SUNSET.**

5 (a) IN GENERAL.—Except as otherwise provided, the  
6 provisions of, and amendments made, by this Act shall not  
7 apply to taxable years beginning after December 31, 2012,  
8 and the Internal Revenue Code of 1986 shall be applied  
9 and administered to such years as if such amendments  
10 had never been enacted.

11 (b) EXCEPTIONS.—Subsection (a) shall not apply to  
12 the following provisions of, and amendments made by, this  
13 Act:

14 (1) Title I (other than section 107).

15 (2) Title III (other than section 362).